United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

B P/S.

75-1245

ORIGINAL

To be argued by
JULIA P. HEIT

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

MANUEL UZIEL,

Appellant.

BRIEF AND APPENDIX FOR APPELLANT

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

APPELLEE,

-against-

DOCKET NO.: 75-1245

MANUEL UZIEL,

APPELLANT.

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STATEMENT PURSUANT TO RULE 28 (3)

PRELIMINARY STATEMENT

This is an appeal from a judgment of conviction rendered June 25, 1975 in the United States District Court for the Southern District (Knapp, J.) convicting appellant Uziel after trial of unlawfully conspiring to violate Sections 812, 828, 841 (a) (1), 841 (b) (1), 843, 951, 955, 959 and 960 of Title 21, United States Code by possessing with intent to distribute a Schedule I narcotic drug. Appellant was sentenced to two and one-half years imprisonment and a three year special parole to commence upon the expiration of the term of imprisonment.

QUESTIONS PRESENTED

1. Whether the Court's supplementary charge to the jury regarding the definition of the word "wilfully" was so prejudicial and misleading that appellant was denied a fair trial.

2. Whether the Court's refusal to grant appellant's motions for a severance deprived him of a fair trial.

3. Whether the Court's failure to permit counsel to examine the Immigration file of the Government's key witness in order that he could determine if the information contained therein could be utilized on cross examination both improperly restricted appellant's constitutional right of confrontation and denied him information that might have been favorable to his defense.

4. Whether the introduction into evidence of 178 kilos of heroin was both unwarranted on the facts of this case and was so prejudicial that appellant could not receive a fair trial once the jury observed this contraband.

STATEMENT OF FACTS

On May 5, 1975, appellant and his co-defendant, Antonio Borrego Vidal, proceeded to trial before the Hon. Whitman Knapp on a two count indictment charging them with conspiring to distribute a Schedule I drug; to wit, heroin, and knowingly possessing said drug with intent to distribute it.* Aside from the two defendants, the indictment charged that there were seven additional co-conspirators. Appellant had been subjected to two prior trials; the first resulted in a hung jury and the second ended in a mistrial when a juror became ill during deliberations.

The key witness for the Government was George Warren Perez, Cuban-born and 62 years of age. In 1958, Perez testified that he established a travel agency known as the Via Worldwide Tours which was located at 992 Amsterdam Avenue in New York City. (98-100)**

*The indictment is set forth in the Appendix (A)

**Numerical references are to the pages of the trial transcript.

Perez first met Luis Ortega at his office in the summer of 1967 when Roberto Martinez, who was in the drug business, introduced him as a person who would buy many tickets from him, and whose principal business was "tequila" and "perico," meaning heroin and cocaine respectively. (103-4) In September or October of 1967, Ortega told him that he wanted to travel to Europe in order to make a connection so that he could bring heroin to New York. (117) When Ortega asked him if he could supply him with an American passport, Perez said such a passport could not be supplied if Ortega was not a citizen. (117) Accordingly, Ortega told him that he would obtain a passport elsewhere. (117) About a month later, Ortega came to his office with an American passport and bought an airline ticket in the name of Benita Arroyo from New York to Madrid. (117, 119) Ortega told him that there existed a very good possibility of his making connections in Marseilles and Spain. (118)

According to Perez, in the summer of 1968, Ortega introduced him to Jose Centor, stating that Centor was his new European contact who just arrived in the country with the first shipment of heroin. (127) The next day, Ortega came to his office with about $100,000 in small denominations and asked Perez whether he could change these bills into $100 bills. (127) Perez changed the money for him as requested by going to various banks where he had accounts. (129-130) The purpose of changing the money was so that Centor could return to Europe with the money and prepare for the next shipment.

Ortega also introduced him to Jose Baeza who was going to help Ortega distribute the heroin. (129) Four or five weeks later, Ortega told him that a new shipment had just arrived and that he would have $150,000 for Perez to change into large bills. (130)

Perez further testified that in the early part of 1969, he had another conversation with Ortega regarding both a shipment of heroin by Centor and a new entry of cocaine via Mexico. (132-33) Ortega explained that he had a new connection in San Antonio with a Mexican General named Suarez and that he could now receive drugs via both San Antonio and New York. (133) Ortega further explained that they would pass the drugs from Mexico to San Antonio in armored trucks and Baeza, Esther Sierra,and he would then bring the drugs from San Antonio to New York. (133-34) Consequently, Ortega frequently bought airline tickets to San Antonio for himself, Baeza, and Sierra. (134) After each of his trips to San Antonio, Ortega would come to his office with a large suitcase containing more than $150,000 and would ask him to change the small bills into $100 bills. (142)

In the spring of 1969, Ortega told him about his trip to Spain and mentioned that his close friend, "Nico," as a result of some difficulty there, had been compelled to hide out in Barcelona for three months. (164) Perez later learned that Nico was the defendant Vidal. (164)

Thereafter, in May of 1969, Perez issued tickets for Geneva in the names of Juan Playa, a name then used by Ortega, and Jose Baeza. (166) When Ortega returned from this particular trip, he mentioned that they had found a new group in Europe which he only referred to as the "Frenchmen." (170) It was in September of 1969 that Baeza was issued another ticket so that he could go to Europe to prepare a new shipment. When he returned from this trip, Baeza told him that everything had worked out perfectly. (175) However, Ortega later showed him a letter which he had received from Europe signed by Maurice, who was one of the Frenchmen. (175) The letter stated that Ortega should not send Baeza to Europe any more because they considered him to be weak, as he had cried in front of the Frenchmen regarding his family who was still in Cuba. The letter further instructed Ortega to completely disassociate himself from Baeza, or they would cease doing business with him. (177) Ortega in response to this letter told Perez that he would send Baeza to another place. (177) In the early part of 1970, Ortega introduced him to the defendant Vidal, who was to be Baeza's substitute. (178-79)

In the summer of 1969, Ortega introduced him to still another contact named Anthony Muzy from whom they expected to receive large quantities of drugs. (180) Ortega also told him that he had obtained an apartment in North Bergen, New Jersey for the Frenchman

so that he could stay there until the first shipment arrived. (181) After the arrival of the first shipment containing 70 kilos of heroin, Ortega brought him more than $200,000 to change. (181) In the summer of 1970, 70 kilos of heroin arrived concealed in a Citroen car which had been dismantled in a house on 48th Street in New Jersey. This shipment had been delivered to "Tony the Italian" (co-conspirator Stanzione) by Ortega, Vidal and someone known to Perez only as "El Gallago." (190)

Perez explained that he had first met Stanzione in his office in March of 1970 and Stanzione had at that time introduced him to Ortiz, who also dealt in narcotics. (193) On a later date, Stanzione told him that Ortiz had been caught with two or three kilos of heroin and wanted to get out of the country. Perez helped Ortiz flee the country by getting him a Panama passport. (197) When Perez subsequently met Ortiz in Madrid, Ortiz informed him that he had made good connections and asked Perez if he could arrange for a buyer. Perez responded that he could handle quantities of 50 to 100 kilos and that his contact was Ortega. Ortiz then told him that if he had any difficulty, he could contact Stanzione, who would buy any quantity and would also pay in advance. Upon returning to the United States, Perez explained the situation to Ortega who agreed to take any quantity that should arrive. (218-19)

Perez further testified that he met with another contact named Augustine Alvarez, who carried contraband from Santo Domingo to Puerto Rico and who introduced him to General Mendez. (219) Mendez told Perez that he would have no trouble bringing anything into Puerto Rico. (220) Accordingly, Perez went to Germany where he obtained Ortiz' approval for this particular plan. Ortiz also told him that as he had made some contacts in Italy, he would travel there. (220)

On December 10, 1970, Perez received a cable from Ortiz instructing him and General Mendez to go to Italy where Ortiz subsequently gave them eight kilos of heroin and further instructed them to go to Genoa to receive the balance of the drugs. Perez and Mendez then went to Genoa, but since the shipment did not arrive, and it was right before Christmas, they returned to New York. (226) When Perez explained to Ortega what had happened, Ortega responded that there was no problem as the Frenchmen had just arrived and they were expecting a big shipment. (227) In the beginning of January, this shipment did arrive, and Ortiz asked him to change about $250,000 to $300,000 for him. (230) Ortiz delivered this particular shipment to Stanzione. (230)

In the meantime, Perez testified that his 25 kilo shipment of heroin had arrived in Santo Domingo and would soon be in New York. However, on January 18, 1971, Alvarez called him and said that

General Mendez had been arrested in Puerto Rico with the 25 kilos of heroin. (237) After this seizure, Ortega took him to his house in Belmar for his protection in case General Mendez decided to talk. (25) Thereafter, Perez went to live in Ortega's house in North Bergen, New Jersey. (254) He never returned to his office because he feared that he might be arrested for the case in Puerto Rico. (256)

Perez then testified to his meetings with appellant. He maintained that he first met appellant in September of 1970 in the company of Ortega, the Battle brothers, and Hector Calle. Ortega told him that the Battle brothers and Calle were fugitives and asked him if he could obtain passports to get them out of the country. (238) Perez told him that he could get them Dominican Republic passports. Whereupon, appellant stated that if Perez got the passports, he would see to it that the men got out of the country. Appellant thereafter suggested that these men first go to St. Croix and then to Spain. (239) Ortega responded that once the men were in Europe, they could make drug contacts there. (239) Accordingly, Perez got the passports and issued three flight tickets. (241)

In January of 1971, Perez stated that he went to Puerto Rico with appellant and one Juvenal in connection with the Alvarez deal. (243) Appellant went to Puerto Rico to check on some jewelry and had nothing to do with his discussions with Alvarez regarding the 25 kilos of heroin. (244)

Perez again saw appellant in the beginning of February in the company of Ortega. In response to Ortega's questions, appellant told him that he was not working steadily and agreed to pick up messages or papers for Ortega at Perez' office. (255)

According to Perez, in February of 1971, he and Ortega met Roberto Gonzales who represented that he had a fantastic plan to introduce cocaine in liquid form into the United States. (258) Such a liquid, according to Gonzales, could pass for liquor in bottles. (258) Gonzales explained that the cocaine would be converted into a liquid in Columbia and then reconverted into a powder once it reached the United States. (258) The next day this plan was explained to appellant as well as the difficulty which they were encountering in obtaining the necessary materials for this transformation. Appellant said that he had contacts to obtain large quantities of acetone and alcohol that were needed. (260) At a second meeting, it was decided that they should find an isolated place to set up a laboratory and that appellant and Perez would be responsible for finding such a location. (26) After two weeks had passed, he and appellant obtained a 64-acre farm in Pennsylvania. (262) Since someone thereafter offered them a summer house in East Hampton, appellant rented it for the season at a price of $4,000.

Thereafter, Ortega received another letter from the Frenchmen instructing them to look for property with a garage large enough to

contain a truck. (269) The purpose of this, according to Ortega, was because a truck was going to arrive in the United States, and inside this truck would be a racing car that would contain about 100 kilos of heroin. The racing car had been registered to race at the Watkin Glen races. (269) Ortega then instructed appellant and himself to first find this garage as this was more urgent than the laboratory. (270) Two weeks later, they found a suitable garage in Newark, New Jersey and then learned that the cars would be arriving in the United States in the middle of June. (273) Ortega then directed them to find a large house so that the Frenchmen would not have to stay at a hotel. They rented such a house in Teaneck, New Jersey.

Perez further testified that on July 17, 1971, he finally met Claude and Denise Schoche at the house in Teaneck. Since Claude did not speak English, Denise explained that the ship containing the truck and the racing car would arrive on the Queen Elizabeth II. The car contained 100 kilos of heroin. Ortega brought $500,000 in $100 bills to the house where they all helped to count it. Ortega then instructed Perez to buy masking tape and black enamel spray, which he did. (290) The money was wrapped in bunches of $30,000 and $40,000, wrapped in paper toweling, and sealed with the masking tape. They had intended to spray the packages black so that in case there was an inspection of the car in which this money was concealed, it would go undetected. (291) Stanzione represented that he would take everything in this shipment

and Nico was instructed to come from Miami to help. (295) However, on July 23rd, Claude and Denise informed Ortega that the truck was unable to enter the ship and was thus still in Europe. (297) Denise said that the next shipment would be in January or February of 1972, and the car would be registered for a race in Florida. Additionally, instead of bringing 100 kilos of heroin, it would contain 300 kilos. (297) Ortega told them that he would have no trouble disposing of the drugs. (297)

Thereafter, in August of 1971, Perez learned from Ortega of another possible shipment through a man named Orsini. (301) On September 17th, appellant was sent to his office to see if Orsini had left word regarding the arrival of a shipment. He and Ortega in turn went to pick up Orsini at the Hotel Areal in New York. (310) Appellant was supposed to meet them at about 9:30 p.m., but when he did not appear, they went to the Madison Square Garden Garage to pick up a Jaguar that Orsini said contained 97 kilos of heroin. At the garage, they were all placed under arrest. (315)

Perez admitted that he had been convicted of conspiring to import narcotics and possession of narcotics. He had been sentenced to seven years and required to pay a $7,000 fine. (353) He began to serve his sentence on November 14, 1972 and began his co-operation

with the Government in February of 1973. (352) As a result of his co-operation, his sentence was reduced to time served, and the Government promised that neither he nor his family would be prosecuted for any crime other than perjury. (354)

JOSEPH A. MANZER, a licensed real estate dealer in Pennsylvania, testified that on April 20, 1971, he met a man who called himself Ralph Rivera, a nine-year-old boy, and appellant, who was introduced to him as Rivera's chauffer. Mr. Rivera signed an agreement to purchase a 63 acre parcel with a large farmhouse and barn. (681) Several days later, the agent received a deposit of $600 from Rivera, but never again heard from him. (684)

MICHAEL A. PAVLICK, a Special Agent, testified that on September 15, 1971, he was engaged in a surveillance at Pier 92 in New York City. He was looking for a Jaguar which was to come off the Queen Elizabeth II. (887) At about 6:15 p.m., he observed the Jaguar which was being driven by an informant, leave the pier and proceed to the Hotel Pierre, where it was parked until 8:00 p.m. The car was then driven to a garage on 59th Street across from the Playboy Club. There it was dismantled, since the Agents had prior knowledge that the car contained heroin. A search revealed 179-1/2

kilos of heroin in the car. The heroin was removed and replaced with dummy bags of white powder. (889) Following a series of observations during the next few days, Ortega, Orsini, and Perez were arrested when they attempted to take this car from the Madison Square Garden Garage.

When the Government sought to introduce the heroin into evidence, it stated that it would prefer that this evidence remain in the presence of the jury. Appellant's counsel stated that he would agree to stipulate to the quantity of heroin present instead of having it observed by the jury. (968) The Court responded "Let them look at it and take it away." (968) Whereupon the Government was permitted to introduce into evidence two trunks containing 178 kilos of heroin. (973-74)

CLAUDE SCHOCH, a 28-year-old French and Swiss citizen, testified that between 1969 and 1972, he had earned money by trafficking in heroin from Europe to the United States. (991) He and his brother, who used the name Maurice Vandelli, would come to the United States to contact people who were to buy the heroin. (993, 1005) The buyers would give them money and this money was shipped to France in cars. (997) He admitted making the following shipments of heroin to the United States: between August and November of 1969, they shipped 42 kilos in an Accadion automobile; between April and

June of 1970, 40 kilos were shipped in a Fiat and 80 kilos were shipped in a Citroen; between July and October of 1970, 220 kilos were shipped in three different cars; and in January of 1971, two cars concealed 80 and 90 kilos respectively. (1000-02) Another shipment was to come in a truck containing a racing car, and was supposed to contain 100 kilos, but the car never arrived. (1003)

According to Schoch, his buyers would arrange to have homes with garages where the cars could be dismantled. (1007) He identified Ortega as a buyer who had purchased heroin from him at $9,000 per kilo. (1008) He maintained that he had also met Perez who knew of the shipments, but he never met appellant. (1050-52) Schoch stated that the members of his group who would go to the United States were Jeannot and Carcel Surragto, Roch and Jean Orsini, and Nedo Pedri. (996)

Finally, Schoch admitted that in 1974 he had been arrested and an indictment was still pending against him. (1026)

During the presentation of the Government's case, a discussion ensued regarding whether Mr. White, an attorney for the defendant Vidal, would be able to invoke the attorney-client privilege when called as a witness by the Government concerning investments of money in real estate made by Vidal through Mr. White. There was also a discussion regarding whether Mr. White, if he should so testify,

would be granted immunity. (885) This matter was resolved when the Government and counsel for Vidal agreed to enter the following stipulation concerning this money:

> It is also stipulated and agreed that on the following day the defendant Antonio Borrego Vidal transferred the following amounts of money to an individual in Miami, Florida:
>
> | | |
> |---|---|
> | On March 11, 1970, | $10,000.00 |
> | On January 14, 1971, | $17,000.00 |
> | On March 1, 1971, | $15,000.00 |
> | On March 22, 1971, | $38,000.00 |
> | On October 18, 1971 | $22,176.11 and on the same day |
> | October 18, 1971 | $ 8,000.00 |
> | The total amount being | $110,791.11 |
>
> It is further stipulated that these sums of money were utilized for real estate transactions. (1058-59)

APPELLANT'S CASE

Appellant, 45 years old and married with three children, testified that he had no prior convictions. (1074) He first met Ortega in Cuba in 1959 after the overthrow of Batista. For a short period of time, appellant was in charge of certain records in Cuba, and was required to go to the police station to check on various people. Ortega was one of the officers in charge of the precinct. He next saw Ortega in Manhattan in the company of Perez. (1096)

Appellant claimed that in November of 1970, he was not at the travel agency with Ortega, but was there with Juan Battle. (1095)

He had asked Battle for a loan, but Battle told him that he also was in financial difficulty and told appellant to come with him to see Perez. This is when he met Perez for the first time at his travel agency. (1097) Perez told appellant that he would help him find a job. (1098) Appellant denied stating that he would help the Battle brothers leave the country so that they could set up a drug business. (1099)

According to appellant, he again saw Perez when he went to his travel agency to buy a ticket to go to St. Croix to collect some debts. (1100) He only used his proper name when travelling; he never received a phony passport from Perez; and he is a registered alien with a green card. (1101)

In January of 1971, appellant next saw Perez when he went to the agency to buy his monthly ticket to St. Croix. He heard Perez talking to someone named Juvenal, who had connections in jewelry. (1106) Appellant therefore went to Puerto Rico with Perez and Juvenal to check on some jewelry. (1106) Perez at this time did not tell him that the purpose of his trip was to go there to see General Mendez in order to negotiate the narcotics deal. (1107)

Subsequently, when Perez began to question him regarding his skills or business experience, appellant told him about his Ajax business in Cuba. (1109) Perez later told him that he knew someone

who was interested in his cleaning idea, and that was when he was introduced to Ortega. (1109) Appellant then told Ortega that he would need $15,000 to $20,000 to start such a business on a low level. The idea was to produce a cleanser that was very popular in Cuba by the name of Farola. (1110) If they could manage to sell this product cheaper than Ajax, the Latin people would buy it. (1110) When Ortega told him that he was willing to invest in this business, he also stated that he and Perez should find a place where they could start manufacturing this product. Such a place was found in Newark, New Jersey. (1111) However, appellant told Perez that this place would not be suitable for the storage of silica sand, but Perez replied that since he had a lot of machinery stored in Puerto Rico, he could use this place for storage. (1111) Perez never told him that the garage was to be used for the storage of a truck and a racing car. (112) Appellant put his own name on the lease and denied ever meeting the Frenchman at this garage. (1116) Perez, in the meantime, appeared to have no intention of investing any money and the business never got started. (1118-19)

Thereafter, Perez told him that he had spent some of the money with which he was supposed to buy visas for the people in Cuba and consequently he did not want to go to his office anymore. (1121) He asked appellant if he wanted to make some money by picking up and delivering tax forms of his clients from the office.

Appellant claimed that Perez lied when he stated that he was present during a conversation with Gonzales dealing with bringing cocaine in liquid form into this country. (1124) He did acknowledge going to Pennsylvania to look for a farm, but stated that Perez told him that it was going to be used as a resort. (1126) Perez also gave him $4,000 to rent a house in East Hampton for some friends. (1129)

Finally, appellant maintained that he never heard of Schoch; he never used any drugs; he never met a person named Orsini; and they never told him about any Jaguar containing heroin. (1134) On the night that Perez and Ortega were arrested, he was never told to return to the house in Teaneck, or told that he was supposed to drive the Jaguar containing the heroin. (1136) He flatly denied participating in any conspiracy to smuggle drugs into the United States. (1140)

RODOLFO LOZANO confirmed the fact that appellant had put up a factory in Cuba to make detergent products. Lozano worked in this factory from 1959 until 1961 when the Minister of Industry took the factory away from him and he was left without any job. Lozano stated that he again saw appellant in New York around February or March of 1971 when appellant was selling hats for a Puerto Rican parade. (1216-18) Appellant told him that he was thinking of establishing a similar detergent business in the United States. (1218)

MOTIONS FOR A SEVERANCE

During the trial, the Government made an offer of proof that defendant Vidal, when taken into custody for questioning regarding his passport, escaped by jumping out of the window of the Immigration building. The Government informed the Court that Vidal left $10,000 with a security guard and signed a receipt for this money. Although the Government maintained that said evidence would be binding only on Vidal, appellant's counsel promptly moved for a severance on the ground that such evidence was highly prejudicial. The Court in overruling counsel's motion permitted the following evidence to be adduced by the Government regarding Vidal's alleged flight:

LOUIS FINKLEA, an officer of the United States Immigration Service in Miami, testified that he is an Immigration Inspector stationed at Miami International Airport. (601) His function is to inspect persons arriving from foreign parts regarding their qualifications for admission to the United States. (601) He explained that a primary Inspector was one who makes the initial examination of any person and that if this Inspector entertains any doubts regarding a person's credentials, the person is then sent to a secondary Inspector whose function is to delve deeper into the problem. On September 3, 1973, he was

acting as a primary Inspector and interviewed an individual named Joaquim Antonio Diaz Figueroa, who claimed that he was a United States citizen by reason of his birth in Puerto Rico. (602) This man presented a birth certificate in the aforementioned name. Since Inspector Finklea was not absolutely certain that Figueroa was in fact the person mentioned in the birth certificate, he asked him some questions regarding the geography of Puerto Rico, which the man could not answer. (604) Accordingly, this man, whom he identified as the defendant Vidal, was referred to the secondary Inspector Pritchard. (605) THOMAS PRITCHARD in turn testified that on that particular day he processed Figueroa and because he also was not satisfied with this man's responses to questions he had asked, he made him empty his pockets which contained $16,081. (626) He then referred this man to the custody of a private guard service. Pritchard could not identify Vidal as this man. (629-31)

IBRAIN GONZALES, employed with the United States Guard Agency that provides security services in immigration cases to airlines, stated that Mr. Figeuroa was taken into his custody and transferred to an apartment where he could get some sleep. (639) For his protection, he asked Figueroa to turn over $10,000 to him and when Figueroa complied, the Agent gave him a receipt for this money. Gonzales thereafter learned that the man, whom he identified as the defendant Vidal, had escaped by climbing through a window on the second floor. (644, 647)

At one point in the trial, Vidal's counsel made an application for a mistrial based upon the fact that his client was brought into the courtroom wearing handcuffs and that they believed that at least one of the jurors had seen him. The Court responded that unless the marshall had some reason for changing the procedure, Vidal should not be brought into the courtroom while handcuffed. When the Court asked if Vidal wanted an instruction regarding this issue to the jury, his counsel replied "My goodness, no." (530-32) Thereafter, appellant's counsel again moved for a severance based first upon the fact that the jury now knew that the co-defendant was incarcerated, which could prejudice his client, and second, counsel pointed to the evidence brought in regarding consciousness of guilt with respect to Vidal, which also had to prejudice his client. (611) The Court responded that it saw counsel's point regarding the handcuffing of Vidal, but stated it did not think this fact would prejudice the jury, especially since the Court had instructed the jury to distinguish between the two cases. (611)

APPELLANT'S REQUESTS FOR THE IMMIGRATION FILE PERTAINING TO PEREZ

After the trial had commenced, appellant's counsel requested that the Government produce Perez' Immigration file. The Government at this point responded that the file was presently unavailable because it was in the archives, but that they were looking for it. Appellant's

counsel then informed the Court that the Government had indicated that even if they should obtain the file, they might still refuse to turn it over until the Court makes a ruling requiring them to do so. (212) Counsel requested that he be permitted to review this file in order to determine if anything was contained therein that could be used for cross examination. (213) The Court at this time stated that if the Government gave the file to counsel and counsel could point to something worth cross examining, it would entertain the application. (213) Throughout the course of the trial, counsel repeatedly requested the production of this file. (527, 871, 1035) It was only after the summations were completed that the Government informed the Court that it had subpoenaed the Immigration file, but the Regional Director of Immigration refused to turn it over. (1450) The Court previously had stated to counsel:

> All I can tell you is I can't make the Government do what the Government won't do. However, if you have information in the file that turns up and there is a conviction and that is information which you should have, I will set aside the conviction. (1035)

On May 27, 1975, the Court made the following ruling regarding any motion made by the defendant to set aside the verdict based on the unavailability of the Immigration file:

> At the start of the trial in the above-entitled case, the defendant's attorney requested that he be furnished with the Immigration and Naturalization Service file of George Warren Perez, the principal Government witness against the defendant. The Assistant United States Attorney objected, but undertook to obtain the file from the INS authorities in order to allow the Court to peruse the document.

Despite the best efforts of the prosecutor, the report was not obtained from INS until May 20, 1975 - four days after the jury returned its verdict of guilty. At that time, the report was turned over to the Court for an in camera inspection.

After carefully reviewing the INS file, it seems perfectly clear that the defendant Uziel was in no way prejudiced by its unavailability during the trial. The file itself contains no exculpatory material. Primarily, it consists of information relating to events in the 1950's and early 1960's which were known to defense counsel and about which George Warren Perez was cross examined at length. The only information in the file that may not have been known to counsel involves certain allegations of an assault supposedly committed by Perez in the 1950's. Since these allegations did not result in Perez' arrest or conviction, cross examination about this incident would probably not have been permitted at trial. In any event, failure to give this information to the defendant in no way affected the outcome of the trial in light of the substantial impeachment material that was used by the defendant in the cross examination of Perez.

Accordingly, any motion made by the defendant for mistrial or for a new trial based on the unavailability of the INS file, will be denied.

CHARGE

The charge is set forth in its entirety in the appendix (A-17). Portions of the Court's supplemental charge and counsel's objections to said charge are likewise set forth in its entirety in the appendix (A-59).

ARGUMENT

POINT I

THE COURT'S SUPPLEMENTARY CHARGE TO THE JURY REGARDING WHETHER APPELLANT WAS A KNOWING AND WILFUL MEMBER OF THE CONSPIRACY WAS SO PREJUDICIAL AND MISLEADING THAT APPELLANT WAS DENIED A FAIR TRIAL.

In this closely contested case, the sole issue to be resolved by the jury was whether appellant was a "wilful" and knowing participant in the unlawful objective of the conspiracy. Hence, it was vital that the jury be instructed in clear and precise terms regarding the definition of the term "wilful." While the Court's initial charge was adequate, the supplementary charge fell far short of instructing the jury properly as to whether appellant was in fact a "wilful" member of this conspiracy. Since counsel made a timely objection to this charge, appellant's conviction must now be reversed and a new trial ordered.

In this case, a close question of fact existed as to whether appellant was a member of the conspiracy to distribute narcotics. At the first trial, a mistrial was declared because the jury was unable to reach a verdict. At a second trial, another mistrial was declared because a juror became ill during deliberations. And at this third trial, it took the jury a total of 12-1/2 hours to render its verdict of guilty as to the conspiracy charge and to declare itself unable to reach a verdict concerning the possessory charge. It is evident that the jury was indeed troubled when attempting to reach its decision. The case was submitted to the jury at 10:30 a.m. (1501) After deliberating for five hours, the jury reached a verdict as to the defendant Vidal, but could not reach a verdict as to appellant. (1536) Upon deliberating for one and one-half more hours, the jury

returned to the courtroom to request a re-definition of the terms knowing and wilful. (1537, A. 59) At this point, the Court's instructions were critical. However, instead of repeating its initial instruction which was a correct statement of the law, the Court took it upon itself to embellish its definition of the term wilful. The Court explained:

> Now, wilfully implies the evil motive part of it, a wilful child. People call a child wilful. They don't speak of a wilful child when he just wants to do his homework. They speak of a wilful child when he wants to do something naughty.
>
> When you get to be a man you drop the word "naughty" and change it to evil. But that is what is is.
>
> Knowingly is purposefully and intentionally, and wilfully imputes the element of evil. (1538, A. 60)

In defining the term wilful, the Court's use of the metaphor of the "naughty child" was both misleading to the jury and prejudicial to appellant. Not only did such an illustration tend to minimize the grave nature of the charges, but also this example had the effect of easing the Government's burden regarding the quantum of proof necessary to establish that appellant was a "wilful" member of the conspiracy.

First, the Government's objective in this case was to establish the existence of a large-scale conspiracy to distribute drugs and to demonstrate that appellant was a knowing member of this conspiracy. Such a crime is clearly viewed with repugnancy in our drug-ridden community. To compare one's participation in this heionous crime to the acts of a naughty child effectively dilutes the seriousness of the charges before the jury.

And second, the "naughty child" illustration had the unmistakeable effect of lessening the Government's burden of proof in this case. As pointed out, the sole issue that confronted the jury was whether appellant was a knowing and wilful member of the conspiracy. One hardly would equate the maneuvers of drug dealers with the acts of a "naughty child." And the Court's instructions did precisely that. The jury had to be convinced that the acts of a "naughty child" were not quite that serious. Thus, their determination that appellant was guilty very well could have been based on the notion that he did nothing more than commit acts which, if committed as a child, would be considered only naughty.

While appellate courts have permitted the trial courts to use their discretion in construing the term "wilful," no court has gone so far as to sustain the "naughty child" analogy or any similar-type instruction. Brown v. Bullock, 294 F. 2d 415 (2d. Cir.) 1961); McBride v. United States, 225 F. 2d 249 (5th Cir., 1955); United States v. Budzanoski, 462 F. 2d 13 (3rd Cir., 1972); United States v. Sarantos, 455 F. 2d 877 (2d Cir., 1972); Finn v. United States, 219 F. 2d 894 (9th Cir., 1955); United States v. Murdock, 290 U.S. 389 (1937).

Moreover, the prejudice to appellant in this case was compounded when the Court took it upon itself to have a conversation with one particular juror regarding the definition of the term "wilful." (A 61-63)

Although the Court may answer the jurors' questions, such questions are usually presented through the foreman and the Court's response must be directed to the entire jury. To sanction a Court's conversation with only one juror, to the exclusion of the others, would result in the very real possibility that the Court could exert an undue influence on the juror who is singled out. Even the trial court at appellant's sentence expressed doubt as to the propriety of its colloquy with juror number eight. And it is submitted that the Court's inclination was correct, and that such ex parte conversations should not be sustained.

Therefore, it should be found that in this closely contested case, the Court's supplementary charge regarding the term "wilful" was so prejudicial and misleading and was tendered at such a critical point that appellant was denied a fair trial.

POINT II

THE COURT'S REFUSAL TO GRANT APPELLANT'S APPLICATION FOR A SEVERANCE DEPRIVED HIM OF HIS DUE PROCESS RIGHT TO A FAIR TRIAL.

Two striking incidents occurred during this trial that prompted counsel to move for a severance, and a mistrial in appellant's behalf. The first event was when the Government offered detailed evidence regarding the co-defendant's flight as indicative of his consciousness of guilt, and the second event took place when this same co-defendant

was brought into the courtroom in handcuffs, thus making at least one juror aware of the fact that he was then incarcerated. The Court's refusal to grant a severance under these circumstances deprived appellant of his due process right to a fair trial.

There is no question but that the Government's elicitation of extensive facts depicting Vidal's flight as indicative of his guilt had to adversely affect appellant when the jury was making a determination of his culpability. This is not a case where simply one witness told of the co-defendant's flight. Instead, the Government elicited testimony from three different witnesses who each described the facts leading to Vidal's flight. The jury was thus saturated with this evidence of flight which, although permissible against Vidal, was not permissible as against appellant. Even the strongest instructions from the Court that the jury should not consider this evidence against appellant could not prevent a "spill-over" effect.

In dealing with this precise issue, this Court in United States v. Lobo, _F.2d_ (2d Cir., decided 5/14/75) refused to recognize that the co-defendant's decision to flee implied the guilt of anyone but himself. However, it is submitted that this conclusion was reached in Lobo only because this Court was of the opinion that the evidence against the defendant Lobo was substantial. That certainly is not the case here. As indicated, the evidence against appellent could be

considered anything but overwhelming. This issue of credibility was the only issue in dispute at appellant's trial. Either the jury could choose to credit appellant's version of the facts, or they could credit Perez' account. Hence, it can be found on the special facts of this case that both appellant's and Vidal's fate were so inextricably intertwined that the evidence of Vidal's guilt implied appellant's guilt as well. see United States v. Sparano, 422 F. 2d 1095 (2d Cir., 1970)

Appellant's right to a fair trial was further abridged when at least one juror was apprised of the fact that Vidal was incarcerated when he was observed wearing handcuffs upon entering the courtroom. Although the Court immediately recognized the potential prejudice that could inure to appellant, the Court still refused to grant appellant's motions for a mistrial and severance on the ground that the jury was able to distinguish between the two cases. In this closely contested case, such a conclusion is sheer speculation and a defendant's right to a fair trial should not be based on such surmise.

It is settled law that a trial court has a continuing duty during a trial to grant a severance if prejudice appears from the joint trial. United States v. Dineen, 463 F. 2d 1036 (10th Cir., 1972); De Luna v. United States, 308 F. 2d 140 (5th Cir., 1962); United States v. Jenkins, 496 F. 2d 52 (2d Cir., 1974); Schaffer v. United States, 362 U.S. 511 (1960). And such prejudice is manifest in this case. The evidence

of both Vidal's flight and his entry into the courtroom in handcuffs was so "powerfully" incriminating to appellant that the Court should have granted the requested severance. United States v. Gardner, 308 F. Supp. 425 (D.C.N.Y.S.C., 1969)

POINT III

THE COURT'S FAILURE TO PERMIT COUNSEL TO EXAMINE THE IMMIGRATION FILE OF THE GOVERNMENT'S KEY WITNESS IN ORDER THAT HE COULD DETERMINE IF THE INFORMATION CONTAINED THEREIN COULD BE UTILIZED ON CROSS EXAMINATION BOTH IMPROPERLY RESTRICTED APPELLANT'S CONSTITUTIONAL RIGHT OF CONFRONTATION AND DENIED HIM INFORMATION THAT MIGHT HAVE BEEN FAVORABLE TO HIS DEFENSE.

The only witness to connect appellant with the conspiracy was George Warren Perez, who maintained that appellant had both knowledge of the conspiracy and had participated in various acts to accomplish its objectives. Appellant, on the other hand, vigorously maintained that he was never informed of any conspiracy to distribute drugs and that his acts were entirely innocent in nature. Since appellant's word was pitted against the word of Perez, appellant should have had every available piece of information at his disposal to use in the cross examination of the only witness against him. Under such circumstances, the Government's failure to turn over Perez' Immigration file, coupled with the Court's refusal to permit counsel to examine this file unduly restricted appellant's right of cross examination. Pointer v. Texas, 380 U.S. 400 (1965); Douglas v. Alabama, 380 U.S. 415 (1965); Brady v. Maryland, 373 U.S. 83 (1963); Davis v. Alaska, 415 U.S. 308 (1974).

Throughout the trial, appellant's counsel made repeated requests for the production of Perez' Immigration file. (212, 527, 871, 1035) In unequiovocal terms, he informed the Court that he wished to use the file in his cross examination of Perez. Yet, it is apparent on this

record that the Government studiously avoided turning this material over to the defense. The Government first maintained that the file was unavailable as it was in the archives, but stated that they were looking for it. (212) Counsel at this juncture informed the Court that the Government had indicated that even if they should obtain the file, they still might refuse to turn it over to appellant. Whereupon, the Court stated that if the file should be turned over to the defense and counsel could point to anything worth cross examining about, it would permit such an examination. (213) Although counsel continued to press for the production of the file, it was only after the summations had already been completed that the Government informed the Court that the Regional Director of Immigration had refused to turn the file over, despite the fact that it had been subpoenaed. (1450) Even then, the Court still adhered to its previously stated position that if counsel could find information contained in the file which could be used for cross examination purposes, it would readily set aside any conviction. (1035) However, for some reason not discernible in this record, the Court never permitted counsel to inspect the Immigration file. When the file was finally turned over to the Court, the Court, upon its own evaluation, ruled that there was nothing contained therein that would have changed the verdict.

It is submitted that the refusal of the Court to permit counsel to examine the Immigration file, and make his own determination as

to whether there was information in that file that could be used for cross examination purposes resulted in a clear cut curtailment of appellant's right of cross examination. It is difficult to reconcile the Court's final ruling with its position during the trial. The Court clearly led counsel to believe that he could examine the Immigration file. And the Court further indicated that if counsel found anything worth cross examining Perez about it would either permit such a cross examination or set aside any conviction. There is nothing in this record to show why the Court so suddenly should have changed its position. There is no indication that the file contained any confidential material, or that its revelation might have affected our national security or endangered any particular person. In sum, there appears to be no valid reason for the Court's refusal to permit counsel to examine this file.

Moreover, in the absence of any need for confidentiality, appellant's counsel should have been permitted to make his own determination regarding whether the information contained in the Immigration file could have been used effectively in his cross examination of Perez. It is not for the Government or the Court to determine what use counsel would have made of this information.

Since appellant's conviction was predicated solely upon the word of Perez, it was therefore crucial that he be permitted to examine any

available information pertaining to this witness. Hence, the failure by the Court to permit counsel to inspect the Immigration file must be deemed reversible error. United States v. Jenkins, 510 F. 2d 495, 500 (2d Cir., 1975); United States v. Miles, 480 F. 2d 1215 (2d Cir., 1973); United States v. Pacelli, _F.2d_ (2d Cir., decided 7/24/75)

POINT IV

THE INTRODUCTION INTO EVIDENCE OF 178 KILOS OF HEROIN WAS BOTH UNWARRANTED ON THE FACTS OF THIS CASE AND WAS SO PREJUDICIAL THAT APPELLANT COULD NOT RECEIVE A FAIR TRIAL ONCE THE JURY OBSERVED THIS CONTRABAND.

Although appellant and his co-defendant were charged with both the conspiracy to distribute drugs and the substantive crime as well, there was nevertheless no valid reason for the Court to have permitted the flagrant display of heroin before the jury. Such an exhibition was geared solely to inflame the jury's minds against the two defendants and obviously, the Government accomplished its objective.

Ordinarily, the introduction into evidence of the seized narcotics is proper. In this case, however, counsel aptly recognized the inherent prejudice that would inure to his client by the display of this evidence before the jury. He therefore agreed to stipulate that not only had the heroin been seized, but also agreed to stipulate as to the weight of this seizure. Such a stipulation would have thus informed the jury

of all the relevant facts pertaining to the seizure of the heroin. Instead, the Court over objection, permitted the Government to introduce into evidence two trunks containing 178 kilos of heroin. The presence alone of this huge quantity of narcotics had to prejudice the jury against the two defendants and detract from the sole issue in this case - namely, whether appellant had knowledge of the conspiracy.

If the Courts are truly interested in assuring the defendants a fair trial, then such stipulations, as counsel agreed to enter in this case, should be encouraged. Accordingly, it should be found that the introduction of the 178 kilos of heroin was so prejudicial, especially when counsel attempted to obviate the prejudice to his client by stipulating to its admission, that appellant was denied a fair trial.

POINT V

THIS COURT IN ITS SUPERVISORY POWERS SHOULD DISMISS THE INDICTMENT.

In a pre-trial motion, appellant contended that the indictment against him should have been dismissed for the following reasons:

1. The Government at both the first and second trials failed to disclose relevant information to the defense pursuant to Brady v. Maryland, supra. Specifically, the Government had acknowledged that Perez had initially identified someone other than the co-conspirator Stanzione, but failed to disclose this fact to the defense.

Perez' inability to make an accurate identification could have influenced the jury in either the first or second trial, and could have resulted in an acquittal of appellant and his co-defendants.

2. Appellant, by being subjected to three trials, has been placed in jeopardy three different times. Such successive trials should offend the due process clause of the Federal Constitution and require the reversal of appellant's conviction.

CONCLUSION

FOR THE ABOVE STATED REASONS, THE JUDGMENT SHOULD BE REVERSED AND A NEW TRIAL ORDERED.

August, 1975

Respectfully submitted,

EDWARD PANZER
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299 Broadway
New York, New York 10007
(212) 349-6128

JULIA P. HEIT
Of Counsel

D. C. Form No. 100

CRIMINAL DOCKET

JUDGE GRIESA Docket Sheets CRIM. 994

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	W. Cullen MacDonald, AUSA
BENJAMIN RODRIGUEZ, a/k/a Benny One-Eye 1&2	264-6427
ANTHONY STANZIONE 1&2	
ANTONIO BORREGO-Vidal 1&2	
MANUEL UZIEL 1&2	
LUIS GOMEZ ORTEGA-1-& 2	For Defendant:
JOSE RODRIGUEZ BAEZA 1&2	
WILLIAM SHERMAN TERRELL, a/k/a Goldfinger 1&2	
ROCH ORSINI 1&2	
JOHN DOE, a/k/a El Gallego 1&2	

ABSTRACT OF COSTS	AMOUNT		DATE	NAME	RECEIVED	DISBURSED
(07)						
Fine,			5/19/75	Stanzione	100,000	
Clerk,			5/20/75	Treas. (Bail Forfeiture)		100,000
Marshal, 1, 1, 7, 4, 3						
Attorney,						
T21						
846, 848, 841(a)(1) (b)(1)(A). Consp. to violate Narcotic Laws of the U.S. (Ct1). Distr.& possess. w/intent to distr. HeroinI. (Ct2) Narcotic Criminal enterprise. (Ct3)				(Three Counts)		

DATE	PROCEEDINGS
10-29-73	Filed indictment. (assigned to Judge Griesa as related matter) Case related to 73Cr713 and 73 Cr 978).
10-30-73	Jose Rodriguez Baeza-Filed affidavit and notice of motion for an order to suppress, sever, discovery and inspection.
10-30-73	Manuel Uziel Filed affidavit and notice of motion for an order to sever, discovery and inspection.
11-2-73	Filed affdvt in opposition to motion to dismiss.
11-2-73	ANTHONY STANZIONE - Filed Information ; Section 849 of Title 21.

(cont'd on page 2)

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDA
-2-73	Motion for severance by defts' Uziel,Baeza and Ortega denied. Motion for severance by deft. Stanzione Dec. Res. Griesa,J.		
-7-73	Baeza-Filed memo. endorsed on deft's motion filed 10/30/73 Disposed of Items 2 & 3 as per record of hearing 11/2/73. Item 1 deferred to trial. Griesa,J. (mailed notice)		
	Uziel-Filed memo. endorsed on deft's motion filed 10/30/73 "Motion denied. So ordered. Griesa,J. (M/N)		
11-7-73	Ortega- Filed affidavit and notice of motion filed 10-3073 for severance, double jeopardy, Collateral estoppel and selective prosecution.		
1-7-73	Ortega- Filed memo. endorsed on deft's motion filed 10-30-73. " Item (a) of motion denied. Items(b)(c) & (d) deferred as to record of hearing Nov. 2, 1973. So ordered. Griesa,J.(m/n)		
11-8-73	JOSE RODRIGUES BAEZA - Filed Order. ORDERED that subpoena be issued for all records relating to the acct of deft., and subpoena be served without prepayment of costs & fees. GRIESA,J.		
11-9-73	JOSE R. BAEZA - Filed CJA Form # 21, Authorization and voucher for interpreter fees. GRIESA,J.		
11-16-73	JOSE RODRIGUEZ BAEZA - Filed Order. Deft. is to reside at Community Treatment Center as condition of his remaining at liverty on bail. GRIESA,J.		
11-27-73	MANUEL UZIEL - Filed CJA Form # 21 - authorization for transcript.		
11-27-73	GEORGE W. PEREZ - Filed CJA Form # 21 - authorisation for transcript.		
12-6-73	WILLIAM S. TERRELL - Filed deft. memo of law in support of motion for judgment of acquittal.		

Cont'd on page 3

DATE	PROCEEDINGS
2-13-73	WILLIAM S. TERRELL - Filed defts. requests to charge.
12-18-73	Filed Govt's. requests to charge.
1-9-73	Deft. ORTEGA - motion for severence - Granted. GRIESA,J.
1-12-73	Deft. STANZIONE - motion to suppress - Denied. GRIESA,J.
11-13-73	Defts. RODRIGUEZ,STANZIONE UZIEL BAEZA AND TERRELL - PLEAD NOT GUILTY.
13-73	Jury Trial begun before GRIESA,J. as to defts. RODRIGUEZ,STANZIONE,UZIEL, BAEZA AND TERRELL.
11-14-73	Trial cont'd.
11-15-73	Trial cont'd. Deft. STANZIONE motion for mistrial denied.
11-16-73	Trial Cont'd.
11-19-73	Trial Cont'd. Deft. RODRIGUEZ motion for mistrial denied.
11-20-73	Trial Cont'd.
11-21-73	Trial Cont'd.
11-26-73	Trial Cont'd.
11-27-73	Trial Cont'd.
11-28-73	Trial Cont'd.
11-29-73	Trial Cont'd. Deft. BAEZA motion to suppress granted.
11-30-73	Trial Cont'd.
12-3-73	Trial Cont'd. Deft.RODRIGUEZ motion for acquittal denied on ct.1 Dec. Res. ct.2. DEFT. STANZIONE motion for acquittal denied on ct 1 , Dec.Res. ct.2.
12-4-73	Trial Cont'd.
12-5-73	Trial Cont'd. Defts. RODRIGUEZ & STANZIONE motion to dismiss ct.2 denied. BAEZA motion to dismiss ct. 2 Granted.
12-6-73	Trial Cont'd.
12-10-73	Trial Cont'd.
12-11-73	Trial Cont'd.
12-12-73	Trial Cont'd.
12-13-73	Trial Cont'd.
12-14-73	Trial Cont'd. RODRIGUEZ - NOT GUILTY . TERRELL - NOT GUILTY. BAEZA - GUILTY on Count 1.

Cont'd. on page 4

DATE	PROCEEDINGS
12-15-73	Trial Cont'd.
12-17-73	Trial Cont'd.
12-18-73	Trial Cont'd.
12-18-73	Trial Cont'd and Concluded. Jury dead locked as to defts. STANZIONE & UZIEL, Motion for mistrial as to defts. STANZIONE & UZIEL - Granted. GRIESA,J.
1-7-74	BENJAMIN RODRIGUEZ - Filed CJA # 21- Authorization for transcripts. GRIESA,J.
1-7-74	MANUEL UZIEL- Filed affdvt. & notice of motion for order to dismiss [illegible] of the indictment and for a separate trial thereon and to sever said deft. from the other defts. and granting a separate trial- ret. 1-11-74.
1-8-74	Filed Govt's. memo of law.
1-8-74	Filed Govt's. memo of law.
1-9-74	Filed Govt's. affdvt. in opposition to deft. UZIEL motion for severance.
1-15-74	BENJAMIN RODRIGUEZ - Filed CJA Form # 21, Authorization for interpreter fees, GRIESA,J.
1-24-74	JOSE R. BAEZA - Filed affdvt. and notice of motion for new trial. Ret. 2-1-74.
1-24-74	MANUEL UZIEL - Filed MEMO END on deft. motion to sever. Motions denied, as recorded in minutes of hearing 1-22-74. GRIESA,J.
1-24-74	LUIS ORTEGA - Filed notice of motion to dismiss indictment and MEMO END. Motion denied, as recorded in minutes of hearing 1-22-74. So Ordered. GRIESA,J.
1-24-74	~~XXXXXXXXXX~~ FILED affdvt. of COONEY, AUSA for W/H/C/ ad pros.
1-31-74	ANTONIO BORREGO VIDAL,- Filed Notice of appearance by Oscar A.White, 209 East. Flagler St., Miami , Fla. (358-1153)
2-1-74	JOSE R. BAEZA - Sentence adj'd. until Mar. 1- 74 at 10 a.m.P.S.I. Ordered. Deft. remanded. GRIESA,J.
2-11-74	ANTONIO BORREGO VIDAL - Filed notice of motion Re: petition to discharge bond.
2-11-74	LUIS ORTEGA - Filed defts. demand for B/P.
2-11-74	ANTONIO B. VIDAL - Deft. NOT PRESENT - Court enters plea of not guilty. Trial date set for 3-4-74 at 10; a.m. GRIESA,J.
2-11-74	ANTONIO B. VIDAL - Filed the following papers received from U.S. Magistrate: Docket Entry Sheet, Indictment Warrant and Disposition Sheet.
2-14-74	Docketed transcript of record of proceedings dated 11-8-73 and filed 1-31-74.

Cont'd on page 5

DATE	PROCEEDINGS
-14-74	Filed Govt's affdvt in opposition to deft. ORTEGA to proceed in forma pauperis.
-14-74	Filed Govt's. memo of law.
-15-74	VICTOR EUPHEMIA - Filed W/H/C Ad Test. Writ issued and ret. 2-22-74.
-15-74	JOSEPH RAGUSA - Filed W/H/C Ad Test. Writ issued and ret. 2-25-74.
-19-74	STANZIONE, VIDAL, VZIEL & ORTEGA - Trial set for 5-6-74 at 10 a.m. GRIESA,J.
-21-74	ANTONIO BORREGO VIDAL - Filed affdvt. and motion for severance.
-26-74	VICTOR EUPHEMIA - Filed affdvt. for W/H/C Ad Test. Ret. 3-12-74.
-26-74	JOSE R. BAEZA- Filed MEMO END on defts. motion filed 1-24-74. Motion denied. See minutes 2-25-74. So Ordered. GRIESA,J.
-74	JOSE R. BAEZA- Filed notice of appeal from judgment rendered of March 4-74. m/n Leave to appeal in forma pauperis is granted-Griesa J.
-6-74	
-6-74	Jose Baeza - Filed CJA Form # 21, authorization and voucher for Joaquin R. Guma in the amt. of $108.00. GRIESA,J.
-6-74	B. RODRIGUEZ - Filed CJA Form # 21, Authorization and voucher for M.E. Cardenas, in the amt. of $36.00. GRIESA,J.
-27-74	~~GORDON H. McGILLIM - Deft(Atty Present)-Filed Judgment #_____;-and- Issued copies:~~
	~~It Is Adjudged that the deft. is to be FINED $10,000. on each of cts. 1,16,17,-& 34. Non-committed fine totaling $40,000. shall be paid on or before 5 p.m. March 12, 1974.~~
	~~Cts. 2 thru 15, 18 thru 33, 35 thru 55 and 58 thru 61 that is, all remaining cts. against said deft. are dismissed upon motion be defts. counsel with consent of the Govt. GRIESA,J.-~~ error see 72 Cr. 1356.
-27-74	~~GLENN R. MILLER- Deft. (Atty. Present)-Filed Judgment #_____ and issued copies:~~
	~~It Is Adjudged that the deft. is to be fined $10,000. on each of cts. 1,16,17,& 34. Non-committed fine totaling $40,000. shall be paid on or before 5 p.m.; 3-12-74.~~
	~~Cts. 2 thru 15, 18thru33 & 35 thru 55 that is all cts. against said deft. are dismissed upon motion by defts. counsel with consent of the Govt. GRIESA,J.-~~ Error see 72 Cr.1356.
-74	JOSE R. BAEZA - Deft.(Atty. Present) Filed Judgment and commitment and issued copies. It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of SEVED (7) Years. GRIESA,J.
-14-74	B. RODRIGUEZ - Filed CJA Form # 21, authorization and voucher for interpreter M.E. Cardenas in the amt. of $144. GRIESA,J.
-21-74	B.RODRIGUEZ - Filed CJA Form # 21, authorization and voucher for Transcript. GRIESA,J.

DATE	PROCEEDINGS
3-25-74	BORREGO-VIDAL - Filed motion for serverance and motion to discharge surety.
3-26-7-	M. UZIEL- Filed notice of appearance by Sidney Meyers, 51 Chamber St., New York, N.Y (Document received in court on July 25-73, but never entered on the docket until to
3-26-7-	M. UZIEL- Motion to request the appointment of an expert in handwritting, etc. (Docu received in court on Dec 5-73, but never entered on the docket until today)
3-25-74	L. G. ORTEGA- Notice of motion for dismissal of the indictment; granting discovery a granting deft. a Bill of Particulars and further relief. (Document received in cour Nov. 7-73, but never entered on the docket until today.)
3-27-74	A.BORREGO VIDAL - Deft. motion for severecne is denied.
3-28-74	Filed W/H/C Ad Test. of Victor Euphemia, Writ satisfied 3-15-74. MOTLEY,J.
4-3-74	Filed Govt. notice of motion for forfeiture of bail and for judgment on forfeiture of appearance bond , Deft. BORREGO VIDAL; with affdvt.
3-27-7-	Filed notice that record has been transmitted to the U.S.C.A.
4-3-74	JOSE R. BAEZA - Filed true copy of J/C with marshals return; Deft. committed 12-14-73 following arrest.
4-15-74	ANTONIO BORREGO VIDAL - Filed affdvt. of Oscar A. White.
4-15-74	BORREGO VIDAL - Filed affdvt. of Samuel Siegel.
4-3-71	Filed affdvt. for W/H/C/ Ad Test. of Rovena Everett, Ret. 4-8-74.
4-16-74	ANTHONY STANZIONE - Defts. motion to have Indictment 74 Cr.251 C.L.B., naming STANZIONE as one of the defts. transferred to Judge Griesa - Denied. GRIESA,J.
4-19-74	Filed Order that Agt. of the Federal Drug Enforcement Administration pick up George Warren Perez for conference with U.S. Atty. at the Office of the U.S. Atty. PIERCE,J.
4-22-74	ANTONIO B. VIDAL - Filed Affdvt. for W/H/C Ad Pros. Ret. 5-2-74.
4-25-74	ANTONIO B. VIDAL - Filed W/H/C Ad Pros. Writ satisfied.
4-19-74	LOUIS G. ORTEGA - Filed W/H/C Ad Pros.
5-1-74	ANTHONY STANZIONE - Filed MEMO END on deft. motion for severance. Motion Denied. See minutes of 3-27-74. So Ordered. GRIESA,J.
5-3-74	LUIS GONEZ ORTEGA - Filed Govt. memo of law in support of motion pursuant to Rule 46
5-3-74	Filed ORDER that Joan Moreland be picked up from Rikers Island by Agents of the Fed. Drug Enforcement Administration Task Force for the purpose of conference with U.S.Atty. GRIESA,J.
May 8-74	Filed one sealed envelope; ordered sealed and placed in vault in Room 602. GRIESA,J.

Cont'd on page 7

DATE	PROCEEDINGS
3-74	Filed true copy of Order filed 5-3-74 with marshals return executed same 5-3-74.
-10-74	Filed CJA Form # 21 Authorization and voucher for transcripts. (2)
-17-74	Filed CJA Form # 21 Authorization and voucher for transcripts. GRIESA,J.
-15-74	STANZIONE - Filed CJA Form # 21 Authorization and voucher for interpreter. GRIESA,J.
22-74	STANZIONE - Filed CJA Form # 21 Authorization and voucher for interpreter. GRIESA,J.
0-74	JOSE BAEZA - Filed CJA Form # 20 - Appointment and voucher for Atty. fees, to Stuart Holtzman. GRIESA,J. & KAUFMAN,J. (filed in 73-713)
6-74	Jury Trial began as to Deft's STANZIONE, VIDAL, UZIEL and ORTEGA. Deft's STANZIONE APPLICATION FOR SEVERENCE DENIED. -- GRIESA, J.
7-74	Trial continued.
8-74	Trial continued.
9-74	Trial continued.
10-74	Trial continued.
13-74	Trial continued.
14-74	Trial continued. Deft. STANZIONE application to Strike Deft's RODRIGUEZ and TERRELL from Indictment 73 CR 994 -GRANTED.
15-74	Trial continued.
16-74	Trial continued.
17-74	Trial continued.
20-74	Trial continued. APPLICATION By DEFT. UZIEL TO CONTINUE PRO-SE -DENIED.
21-74	Trial continued.
22-74	Trial continued.
23-74	Trial continued.
24-74	Trial continued.
28-74	Trial continued. Gov't rests. Deft. ORTEGA application for Jufgment of Acquittal GRANTED as to Count 3. Writ satisfied.
29-74	Trial continued.
30-74	Trial continued.
31-74	Trial continued.
3-74	Trial continued.
4-74	Trial continued.
5-74	Trial continued. All Deft's rest. all Deft's motions for Judgment of acquittal- DENIED.
6-74	Trial continued.
7-74	Trial continued. Jury starts deliberations.
8-74	Trial continued. Jury out.
10-74	Trial continued. Jury out.
11-74	Trial continued. Deft's STANZIONE, VIDAL and UZIEL motion for MISTRIAL -GRANTED.
7/6-74	Filed transcript of record of proceedings, dated NOV 7, 1973
7-10-74	Filed transcript of record of proceedings, dated NOV 13, 1973
7-10-74	Filed transcript of record of proceedings, dated NOV 13, 1973
7-10-74	Filed transcript of record of proceedings, dated NOV 21, 1973
7-10-74	Filed transcript of record of proceedings, dated NOV 22, 1973
8/10-74	Filed transcript of record of proceedings, dated DEC 6, 1973
6-10-74	Filed transcript of record of proceedings, dated FEB 1, 1974
	Filed transcript of record of proceedings, dated FEB 25, 1974
	Filed transcript of record of proceedings, dated MARCH 4, 1974

DATE	PROCEEDINGS
[illegible]	[illegible] transcript of record of proceedings dated 5/3/73
[illegible]	[illegible] 1/17/73
[illegible]	[illegible] transcript of record of proceedings dated 4/24-25-26-3-3, 1/74
[illegible]	[illegible] transcript of record of proceedings dated 5/10-17-21-22-23, 74
[illegible]	[illegible] 6/5-12-11/74
[illegible]	[illegible] 6/5-6-7/74
[illegible]	[illegible] transcript of record of proceedings, dated 5/13-14-15/74 5/7/
[illegible]	Filed transcript of record of proceedings dated 5/6/74
[illegible]	Filed transcript of record of proceedings, dated [illegible]
[illegible]	[illegible] dated [illegible]
[illegible]	[illegible] dated [illegible]
[illegible]	Filed transcript of record of proceedings, dated [illegible]
[illegible]	[illegible] dated [illegible]
[illegible]	[illegible] dated [illegible]
[illegible]	[illegible] dated [illegible]
7/17/74	Filed defts.' petition to exonerate surety.
7/25/74	Filed true copy of mandate of the U.S.C.A. that the judgment against defts. Jose Rodriguez-Baeza is affirmed. mn Clerk judgment entered 7/25/74.
5/31/74	Filed Govt. affdvt. for writ of habeas corpus ad pros. against Louis Gomez Ortega. the writ is allowed Pierce,J. WRIT SATISFIED. Griese,J.
	[illegible] ,J.
	[illegible]

Cont'd on page #9

DATE	PROCEEDINGS
Jun.26-74	Luis Borrego-Vidal-CJA 21-Appointment of Norma S. Seltzer, 20 East 35th St, N.Y.C. 10016-Interpreter. Mailed notice. Griesa, J.
May31-74	Jose R. Baeza-Filed CJA 21 approval for payment for services of, U.S. Court Reporters. Griesa, J. Mailed copies.
May.31-74	A. Borrego-Vidal-Filed CJA 21 approval for payment for services, of Mrs. Maria E. Cardenas. Griesa, J. Mailed notice.
May.31-74	Luis Ortega-Filed CJA 21 approval for payment for services, Mrs. Norma S. Seltzer. Griesa, J. Mailed notice.
Jun.4-74	Luis Ortega & A. Borrago Vidal-Filed CJA 21 approval for services of Norma S. Seltzer. Mailed copies. Griesa, J.
Jun.7-74	A. Barrego Vidal-Filed CJA 21 approval for payment for services of, Mr. Ed. Manley. Mailed copies. Griesa, J.
Jun.14-74	A. Burrego Vidal-Filed CJA 21 approval for payment for services of, Norma S. Seltzer . Mailed copies. Griesa, J.
Jun.21-74	Manuel Uziel-Filed CJA 21 approval for payment for services of, So. Dist. Court Reporters. Mailed copies. Griesa, J.
Jun.21-74	A. Borrero Vidal-Filed CJA 21 approval for payment for services of, So. Dist. Court Reporters. Mailed Copies. Griesa, J.
Jun.24-74	A. Borrero Vidal-Filed CJA 21 approval for payment for services of, So. Dist. Court Reporters, Mailed copies. Griesa, J.
Jun.26-74	Luis Borrego Vidal-Filed CJA 21 approval for payment for services of, Norma S. Seltzer. Mailed copies. Griesa, J.
Jul.18-74	A. Borrego Vidal-Filed CJA 21 approval for payment for services of, Mrs. Maria E. Cardenas. Mailed copies. Griesa, J.
9/17/74	Filed memo-end. on letter from Jose Baeza to Judge Griesa the motion for reduction of sentence is granted and the sentence is reduced to five years. Griesa, J. mn
9/17/74	JOSE RODRIGUEZ BAEZA- (atty. present) filed AMENDED JUDGMENT- It is ajudged that the deft. is guilty as charged and convicted and judgment imposed on 3/4/74 is reduced. It is adjudged that the deft. is hereby committed to the custody of the Atty. Gen'l. for imprisonment for a period of FIVE (5) YEARS. Griesa, J. issued copies. ent. 9/24/74
[illegible]	J. R. Baeza - Filed Amended [illegible] By mailing a copy to Penitentiary at Atlanta, Ga. where deft. is serving his sentence.
9/7/74	M. Uziel- Filed CJA 20 appointment of atty. Sidney Meyers, mailed copies by the CJA Clerk and approval for payment of fees. Griesa, J.

D. C. 109 Criminal Continuation Sheet

A-8

DATE	PROCEEDINGS
1/13/75	Deft. Stanzione- filed notice of motion re: dismissal,etc.
1/13/75	Deft. Stanzione- filed memo. of law in support of motion to dismiss.
1/28/75	Deft. Stanzione not appearing before the Court, bail is hereby forfeited and a bench warrant is ordered issued. Knapp,J.
/28/75	A. Stanzione- Bench warrant issued.
/4/75	J. Baeza- filed memo-end. on letter from deft. to Judge Griesa... Application for reduction of sentence denied. Griesa,J. mn pro-
2-24-75	Filed deft. Anthony Stanzione's memo. of law.
-14-75	Filed deft. M. Uziel's affdvt. re: substitution of atty.
-17-75	Filed deft. A. Borrego-Vidal' motion re: speedy trial.
-25-75	Filed Govt.'s affdvt. for writ of habeas corpus ad pros. for A. Vidal retL 4-1-75.
-04-75	Filed OPINION # 42191...deft. A. Stanzione's motion to dismiss is denied...Knapp,J. mn
-75	Filed deft's(Uziel) notice of motion with memorandum in support to dismiss indictment
02-75	Filed Govt.'s notice of motion for forfeiture of bail and for judgment on forfeiture of appearance bond. ret: 5-9-75.
02-75	Filed Govt.'s memo. of law in support of motion for forfeiture of bail
-13-75	Filed ORDER that the U.S.A. have and recover judgment against the deft A. Stanzione, and his surety Public Service Mutual Insurance Co. in the sum of $100,000. pursuant to Rule 46 FRCP. Knapp,J. mn
-13-75	Filed ORDER in accordance with the Organized Crime Control Act of 1970 etc. Oscar White give testimony or provide other information in a proceeding before this Court and that any testimony or other information given by Oscar White pursuant to this order shall be subject to the immunity provisions of the O.C.C.A. of 1970 etc. Knapp,J. mn
01-75	Defts. Vidal & Oziel(attys. present) jury trial begun before Judge Kna
05-75	Jury trial cont'd.
06-75	" " "
07-75	" " "
08-75	" " "
09-75	" " "
12-75	" " "
13-75	" " "
14-75	" " "

-cont'd. on next page-

DATE	PROCEEDINGS
05-15-75	Jury trial cont'd and concluded. Jury retires to deliberate at 10:30AM jury returns at 3:30 PM with a verdict, as to deft. Vidal only, of guilty on counts 1 & 2. Pre-sentence investigation ordered. Sentence adj. to 6-25-75 at 4PM. Bail cont'd. deft. remanded in lien of bail.
	Jury returns at 11:15 with a partial verdict as to the deft. Oziel and finds the deft. guilty on count 1; no verdict on count 2. Pre-sentence investigation ordered. Sentenceadj.to 6-25-75 at 4/ Deft. cont'd. on present bail until 5-29-75 at 10:30 when deft.shall surrender to the U.S. Marshal in room 506. Knapp,J.
05-29-75	Filed OPINION # 42497-...Accordingly, any motion made by the deft. f dismissal or for a new trial based on the unavailability of th INS file, will be denied. Knapp,J. mn
06-06-75	Filed ORDER that the Govt.'s motion to substitute copies for original exhibits numbered 4a,4b, and 4c at the trial of the above-captioned case is hereby granted. Knapp,J. mn
06-27-75	Filed Govt.'s memo. of law
06-27-75	Filed deft. Stanzione's memo. in support of motion to strike.
06-27-75	Filed Govt.'s memo. of law re: opposition to motion to strike.
06-27-75	Filed deft. Vidal's memo. of law re: support of motion to suppress.
06-27-75	Filed deft. Ortega's memo. of law re: support of appl. for judgmt. of acquittal pur to Rule 29 of FRCP.
06-27-75	Filed Govt.'s memo. of law re: opposition to motion of deft. Gomez for judgmt. of acquittal.
06-27-75	Filed memo. of law in support of atty. client privilege and prejudicial effect of counsel testimony by deft Vidal.
06-27-75	Filed motion for judgment of acquittal by deft. B. Vidal.
06-27-75	Filed deft. Vidal's memo. of law .
06-27-75	Filed deft. Vidal's motion to compel production of evidence.
06-27-75	Filed Govt.'s memo. of law in opposition to deft. Vidal's claim of atty. Client privilege.
06-27-75	Filed Govt.'s memo. of law.
06-27-75	Filed Govt.'s requests to charge.
06-27-75	Filed deft. Vidal's requests to charge.
06-25-75	MANUEL UZIEL (atty.present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of TWOand ONE-HALF (2½)YEARS on count 1 and pursuant to T.21,U 841 THREE (3) YEARS Special Parole to commence upon the expira of the term of imprisonment. Knapp,J. issued all copies.
06-25-75	ANTONIO BORREGO VIDAL(atty.present) Filed JUDGMENT- deft. is committ to the custody of the Atty. Gen'l. for imprisonment for a period of TEN(10) YEARS on count 1 to run consecutively to the sentence imposed in the U.S. District Court in Fla, and TEN(10 YEARS on count 2 to run consecutively to the sentence imposed on count 1 and THREE (3) YEARS Special Parole pursuant to T.21, Sec. 841 to commence upon the expiration of the term of impri- sonment on count 2. Execution of the sentence imposed on coun is hereby suspended and the deft. placed on probation for a pe of FIVE(5) YEARS to commence upon the expiration of the term o imprisonment imposed on count 1. Knapp,J. issued all copies

DATE	PROCEEDINGS	Date Judgm.
-01-75	Filed M. Uziel's notice of appeal from judgment of 6-25-75. mailed notices.	
4 3,1975	[illegible] transcript of record of proceedings, dated May 5,1975	
4 3 1975	[illegible] transcript of record of proceedings, dated May 1,1975	
4 3,197	[illegible] transcript of record of proceedings, dated May 6,1975	
4 3,197	[illegible] transcript of record of proceedings, dated May 3,1975	
4 3,197	[illegible] transcript of record of proceedings, dated May 12,1975	
4 3,197	[illegible] transcript of record of proceedings, dated May 15 1975	
4 3,197	[illegible] transcript of record of proceedings, dated April 30, 1975	
4 3,197	[illegible] transcript of record of proceedings, dated May 12, 1975	
4 3,197	[illegible] transcript of record of proceedings, dated May 8, 1975	
4 3,197	[illegible] transcript of record of proceedings, dated May 2,1975	
4 3,197	[illegible] transcript of record of proceedings, dated May 7,1975	
-20-75	Filed affvt. for writ of habeas corpus ad pros. for A. B. Vidal. writ issued ret. 6-25-75.	
26-75	Filed Unsecured Personal Recognizance Bond pending appeal for deft. Manuel Uziel in the sum of $25,000.	
26-75	Filed affdvt. for writ of habeas corpus ad pros. for A. B. Vidal 5-19-75 Knapp,J.	
10-75	A. Vidal- filed judgment and commitment and marshal's return: deft. delivered to -7-2-75 recived this judgment & commitment -and executed same by forwarding copy to Warden of U.S. Penitentiary at Atlanta,Ga., the facility in which the deft. is presently serving a sentence imposed in the U.S. District Court in Florida.	
7-07-75	VIDAL: Filed notice of appeal from final judgment entered (6-25-75) and denial of motion for acquittal or for a new trial and the denial of motion for adjudication of indigent status. (Mailed copy to deft. and to U.S. Atty.)	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By A C Thompson
Deputy Clerk

INDICTMENT

D-6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA :

- v - "S" 73 CRIM. 994

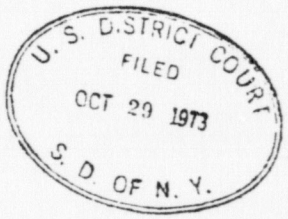
BENJAMIN RODRIGUEZ, a/k/a Benny One-Eye, :
ANTHONY STANZIONE, :
ANTONIO BORREGO VIDAL, :
MANUEL UZIEL, :
LUIS GOMEZ ORTEGA, :
JOSE RODRIGUEZ BAEZA, :
WILLIAM SHERMAN TERRELL, a/k/a Goldfinger, :
ROCH ORSINI and :
JOHN DOE, a/k/a "El Gallego", :

Defendants. :

- - - - - - - - - - - - - - - - - - -x

INDICTMENT

S 73 Cr. (TPG)



COUNT ONE

The Grand Jury charges:

From on or about the 1st day of November, 1968, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, BENJAMIN RODRIGUEZ, a/k/a Benny One-Eye, ANTHONY STANZIONE, ANTONIO BORREGO VIDAL, MANUEL UZIEL, JOSE RODRIGUEZ BAEZA, WILLIAM SHERMAN TERRELL, a/k/a Goldfinger, ROCH ORSINI and JOHN DOE, a/k/a "El Gallego", the defendants, and Luis Gomez Ortega, Jean Orsini, a/k/a Jean Pierre Andre Huguen and George Warren Perez, named in this Count as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly combined conspired, confederated and agreed together and with each other to violate, prior to May 1, 1971, Section 1403 of Title 18, United States Code, Sections 173 and 174 of Title 21, United States Code, and Sections 4701, 4703, 4704, 4771 and 7237 of Title 26, United States Code, and, on and after May 1, 1971, to violate Sections 812, 826, 841(a)(1), 841(b)(1)(A), 843, 951, 952, 955, 959 and 960 of Title 21, United States Code.

A-12

2. It was part of said conspiracy that prior to May 1, 1971 the said defendants unlawfully, wilfully, knowingly and fraudulently would import and bring into the United States large amounts of narcotic drugs from and through France, Mexico and other countries to the Grand Jury unknown in violation of Sections 173 and 174 of Title 21, and sections 4701, 4703-4, 4771 and 7237 of Title 26, United States Code.

3. It was further a part of said conspiracy that prior to May 1, 1971 the said defendants unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, and Sections 4701, 4703-4, 4771 and 7237 of Title 26, United States Code.

4. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants unlawfully, wilfully and knowingly would import into the United States from a place outside thereof Schedules I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 951(a)(1), 952, 955 and 959-960 of Title 21, United States Code.

5. It was further a part of said conspiracy that on and after May 1, 1971 the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, and not pursuant to written order, all in violation of Sections 812, 823, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

6. It was further a part of said conspiracy that the said defendants unlawfully, wilfully, knowingly and intentionally would use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of said conspiracy in violation of , prior to May 1, 1971, Section 1403 of Title 18, United States Code and, afterwards, Section 843(b) of Title 21, United States Code.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about April, 1969, the defendant JOSE RODRIGUEZ BAEZA and co-conspirator Luis Gomez Ortega delivered approximately $240,000.00 to co-conspirator George Warren Perez.

2. In or about September, 1969, defendant JOSE RODRIGUEZ BAEZA left New York City for Geneva, Switzerland.

3. In or about March, 1970, defendant BENJAMIN RODRIGUEZ rented a house in Belmar, New Jersey.

4. In or about August, 1970, defendants ANTONIO BORREGO VIDAL and JOHN DOE, a/k/a El Gallego met with defendant ANTHONY STANZIONE.

5. In or about November, 1970, co-conspirator Jean Orsini, a/k/a Jean Pierre Andre Huguen and the defendant ROCH ORSINI traveled from New York City to New Jersey.

6. On or about March 12, 1971, defendant MANUEL UZIEL and co-conspirator George Warren Perez rented a garage in Newark, New Jersey.

7. In or about June, 1971, defendant BENJAMIN RODRIGUEZ, a/k/a Benny One-Eye, met with co-conspirator Luis Gomez Ortega.

8. In or about June, 1971, co-conspirator Luis Gomez Ortega telephoned defendant ANTHONY STANZIONE.

9. On or about July 12, 1971, defendant ANTHONY STANZIONE went to the vicinity of 1840 Loring Place, Bronx, New York.

10. On or about July 21, 1971, co-conspirator Luis Gomez Ortega withdrew approximately $500,000.00 from the First National Bank of Fort Lee, Fort Lee, New Jersey.

11. On or about September 17, 1971, defendant MANUEL UZIEL went to the vicinity of 992 Amsterdam Avenue, New York, New York.

12. On or about September 19, 1971, the co-conspirators Luis Gomez Ortega, Jean Orsini and George Warren Perez went to the vicinity of Madison Square Garden, New York, New York.

13. On or about September 23, 1971, defendant ANTONIO BORREGO VIDAL withdrew approximately $500,000.00 from the First National Bank of Fort Lee, Fort Lee, New Jersey.

(Title 21, United States Code, Sections 173, 174, 846 and 963.)

SECOND COUNT

The Grand Jury further charges:

On or about the 19th day of September, 1971, in the Southern District of New York, BENJAMIN RODRIGUEZ, a/k/a Benny One-Eye, ANTHONY STANZIONE, ANTONIO BORREGO VIDAL, MANUEL UZIEL, JOSE RODRIGUEZ BAEZA, WILLIAM SHERMAN TERRELL, a/k/a Goldfinger, ROCH ORSINI and JOHN DOE, a/k/a "El Gallego", the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 516 grams of heroin hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

THIRD COUNT

The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of

300

New York, LUIS GOMEZ ORTEGA, named in this Count as the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 812, 828, 841(a)(1), 841(b)(1)(A), 843, 846, 951, 952, 955, 959 and 960 as alleged in Counts One and Two of this indictment, incorporated by reference herein, which violations were a part of a continuing series of violations of said statutes undertaken in concert with at least five other persons with respect to whom LUIS GOMEZ ORTEGA, occupied a position of organizer, supervisor and manager and from which continuing series of violations, he obtained substantial income and resorces.

(Title 21, United States Code, Section 848.)

Foreman

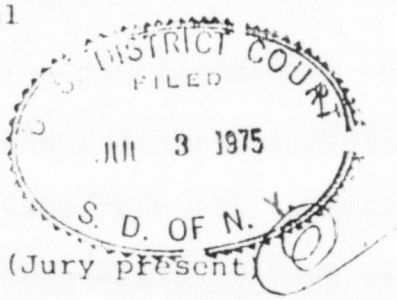
PAUL J. CURRAN
United States Attorney

United States of America

-vs- 73 Cr. 994

Antonio Borrego Vidal and
Manuel Uziel

W.K.



New York, New York
May 15, 1975--9:00 a.m.

(Jury present)

THE COURT: Ladies and gentlemen, this is preliminary logistics as to what is going to happen. I am going to charge you what I believe to be the controlling principles and then I will excuse you for a few minutes to give counsel for each side an opportunity to make suggestions, suggest corrections, criticisms or anything else and then I will call you back and at least give you some housekeeping instructions any further instructions that counsel for either side may have persuaded me are appropriate.

The reason I mention that now is that when I send you out for that brief break it will be the last time I will tell you not to form or express an opinion, but it is still quite important. I don't expect there to be a material change as a result of what counsel may tell me because obviously my belief is I have done it correctly. But that may not be the case and it is quite possible one counsel

or the other will call to my attention something that makes a material difference as to how you should consider it. So just bear that in mind.

As I indicated, this is a tricky courtroom as far as acoustics are concerned and if anybody has any difficulty hearing, please call it to my attention. I won't be at all offended, and specifically that applies to Mrs. Seltzer who has peculiar responsibilities.

Now, in this charge I am first going to refer briefly to the issues and then outline the general principles which the law has developed for guidance in dealing with these issues and then I am going to discuss with you the specific crimes set forth in the indictment.

What then are the basic issues? As I have indicated from time to time they are two-fold.

One, was there a conspiracy between certain co-conspirators not on trial including among others the witness Claude Schoch, various Frenchmen he described as suppliers of heroin and Luis Ortega who was described as the principal American buyer to import heroin into the United States and distribute that heroin in violation of Federal law.

If so, did the defendants on trial Antonio Borrego Vidal and Manuel Uziel or either of them at any time become willful and knowing participants in that conspiracy. So

those are the two basic questions that you are about to consider.

Of course, unless you answer the first question yes, you never need consider the second question.

As I have indicated from time to time, much of the evidence relating to the first question has no direct bearing on either of these defendants. Also, a great deal of the evidence bearing on the second question does not concern any conduct claimed to be criminal or even wrongful. It was offered by the government to persuade you that one or the other of the defendants was associated with one or more of the conspirators at some critical time or acted in some way that, as the Government contends, should persuade you that the defendant in question was indeed an adherent to the conspiracy. Of course, whether any such evidence has that effect is entirely for you to say.

What then are the rules which the law has developed for your guidance in resolving these questions? In the first place, as I have told you before, it is you who must weigh the facts. Nothing that I may say about the facts or that you may conceive that I think about them has any relevance whatever. Now, it may surprise you that don't have to tell you that. Under the Federal law I have the power to if I wish to exercise it to tell you exactly what I think about

the facts and what I think about the credibility of various witnesses just so long as I make it clear to you that you are not bound by my views on such subjects. Why do I tell you that I have that power if I don't propose to exercise it? Simply for this reason:

I want you to thoroughly understand that it is my profound conviction that the jury system only works if indeed the jury totally disregards anything that they may think the Judge feels about the facts, so I just want you to realize I am not telling you this to take care of some formality I have to meet. I am telling you because it is my profound conviction that unless you follow this particular instruction justice may not be done in this case.

As finders of the fact you will, of course, be judges of the credibility of the witnesses. There is no mystery about how you judge the credibility of witnesses. Every day in your life you have ocasion to judge the credibility of people with whom you come in contact, members of your family, your friends, business associates, competitors, everybody who speaks to you wants you to believe what he or she says and, in the course of your daily existence, you develop certain criteria or antenna by which you judge the weight you will put on what people are saying to you.

The theory of the jury system is that it is

better to have the judgment of twelve persons than of one person. After all, if any one person had to make a decision as to the credibility of these witnesses he or she would only have one set of criteria, one set of life experiences, his or hers, to go by. The jury, on the other hand, has twelve such sets and the law says, and I agree with it, that a sounder result is reached if the twelve of you pool your common experiences in making your decisions.

Of course, that only works if you do what the law contemplates, namely, discuss the matter with each other with an open mind so that each of you can get the benefit of the experience and judgment of the other.

Incidental to your function in this regard is the rule that your recollection of the facts controls. What I may remember or what counsel may remember is wholly immaterial. It is your recollection that controls and if you have any question about anything that seems important to you, you can have the stenographer read back pertinent parts of the testimony. Even then if you disagree with what the stenographer reads back, your recollection controls. We are all fallible and you are fallible too but the law places the responsibility on you.

If your recollection is different from what the stenographer has done you have just got to assume that the stenographer made a mistake. As I say, we are all fallible, but the law places the responsibility on you and you must make the decision.

Now, the law does have certain guidelines. One is that you are entitled to take into account the interest any witness may have in the outcome of this action.

To start off, a defendant obviously has an interest. He wants an acquittal and that is his interest. The defendants, on the other hand, claim that various of the Government witnesses, including the Government agents, had motives to falsify -- to some of which claims I will refer to later -- and that you should regard them as interested witnesses.

The point is that it is for you to say whether and to what extent any witness has an interest in the outcome of the case, and, if so, whether and to what extend such interest has influenced his or her testimony before you.

Obviously, you just don't reject a witness out of hand because he or she may have an interest, but you consider the extend of such interest and decide what effect, if any, it had on the testimony.

Isn't that what you do in everyday life? Most people who talk to you have an interest in having you believe

what they say. Otherwise, by and large, they wouldn't bother to say it. In everyday life you take their interest into account in evaluating what they tell you, and that is precisely what you do in the jury room.

With respect to the witnesses Perez and Claude Schoch there is a related consideration that comes into play. According to their own testimony these witnesses are guilty of the very crimes charged against these defendants. The law calls any such person an accomplice. An accomplice is a man or a woman that could be convicted of the very crime that is on trial.

The law says you are entitled to act on the testimony of such a person, but that you must subject it to special scrutiny. That is plain common sense. Obviously any person subject to prosecution for crimes may either have or think he has an interest in ingratiating himself with the Government by testifying on the Government's behalf. Obviously it is more comfortable to be on the witness stand than in the defendant's box. Therefore, the law says -- and it is plain common sense -- that you should take those factors into account in weighing the testimony of such a witness.

However, the law also says if after having taken those factors into account you come to the conclusion the

witness has given truthful testimony, i.e. factually accurate, you may act upon it exactly as you would upon that of any other witness.

As you can see, the basic reason an accomplice's testimony should be scrutinized is the possibility which the law recognizes that an accomplice might be tempted to color his testimony in the Government's favor in order to win the Government's good grace.

In this connection, Perez has told you that with the Government's cooperation he made an application to Judge Pierce of this court who reduced his seven-year sentence to time served which was, as I recollect, about two years. As I recollect it he served about two years. And then Judge Pierce reduced his sentence to what they call time served which means he doesn't serve the rest. And he was also assured that his wife would not be prosecuted.

Similarly Schoch has told you that although he was arrested for crimes punishable by twenty-five years he has assumed he could plead guilty to a charge carrying a maximum of two to ten years. He was also assured of similar treatment for his brother and sister.

Let me interject at this time. It is no concern of ours -- yours or mine -- whether these commitments were wise or unwise or whether Judge Pierce acted correctly or

incorrectly in reducing Perez' sentence.

The United States Attorney has his responsibilities, Judge Pierce has his, I have mine, and you have yours.

In this particular connection yours is to ascertain the facts in this case and so far as concerns Perez and Schoch to determine whether and to what extent their testimony is factual and accurate.

With respect to these witnesses, indeed with any others, it is your responsibility to consider any hopes they may harbor in their breast or any pressure they may feel to be under in determining to what extent, if any, such hopes or pressures may have affected their testimony. However, once you have decided, if you ever do decide, that any or all the testimony of such a witness is factually accurate you may, and, indeed, you must, act on such factually accurate testimony.

There is another rule of general application which is that if you find that any witness who has testified before you has deliberately lied on a material matter, that is, an important matter, you may, if you wish, reject and disregard everything that particular witness has said, but you are not required to do so. You may reject part of his or her testimony that you find to be untruthful and accept and act upon such part as you find truthful.

Now, again, that is just common sense. In your ordinary experiences some people may have told you a lie and you say to yourself, "I am never going to believe anything he or she may ever say again."

Life is too short to be bothered by trying to sort out truth from falsehood as far as this particular person is concerned. On the other hand, you may, after some person has told you even some outrageous lie, consider the motives which caused the person to lie and conclude that in the future you will relieve him if you find such motives not to exist. Like everything else, you act in the same common sense way you would in your daily lives.

Remember this rule only applies to testimony that is willfully false. It has no application to mistakes. And that again is common sense.

Now, when several witnesses were on the stand, one party or the other called his or her attention to prior statements made by the witness which either were or were claimed to be inconsistent with something the witness had said on the stand. Now, such prior statements fall into two categories: Those made not under oath, such statements as claimed to have been made to various Government agents, for example; and those under oath, such statements made in previous trials involving some issue now before you.

The rule with respect to the first category, those not under oath, is that such prior statements have no value of their own as evidence. They may not be used to establish any fact not otherwise proved.

TK2 B2 a.m. Their only proper function is to permit you to evaluate the sworn testimony of the witness as given before you. To the extent that you find such statements helpful for that purpose you should consider them. Otherwise, ignore them.

With respect to the second category, those under oath, the rule is otherwise. Prior statements under oath, a prior statement made by a witness at a time when he took an oath in a prior trial, may in your discretion be used as affirmative evidence of facts contained therein. Of course, you don't have to use them for that purpose and you should not do so unless satisfied that they in fact represent the truth.

You will recollect Exhibit No.91, that blowup assemblage of other exhibits. So far as it consists of pictures of other exhibits it has precisely the value of the exhibits it reproduces. Obviously a piece of evidence gains no virtue just because the Government elects to have it enlarged. On the other hand, Sections A and B of that exhibit represent the witness Pavlick's attempt graphically

to present Perez's description of Ortega's telephone code.

The value of that portion of the exhibit depends on two considerations: A, the extent you credit the truthfulness of Perez's description of the alleged code, and, B, the extent you believe Pavlick's representation of that testimony to be accurate.

Again the Government adds no virtue to the testimony by putting it in tabular form and blowing it up. It's value is the value of the testimony on which it is based.

Maybe this is a good point to remind you of something I mentioned from time to time, namely that you are deciding two separate lawsuits and that evidence applicable to only one defendant must not be permitted to rub off on the other.

With respect to the defendant Vidal three specialized categories of evidence have been offered, each of which I shall briefly discuss with you. These are evidence of possession of sums of money, evidence of flight and evidence of association.

Each of these categories may properly be considered by you, but each must be scrutinized with care.

First, the question of sums of money. When a defendant is charged with a crime the commission of which

would normally produce wealth, it is permissible for the Government to show that at or about the time of the crime's alleged commission the defendant was in possession of substantial sums of money. The theory is that the jury should be allowed to consider the possibility that such money was the fruit of the crimes charged.

Bear in mind that having money in and of itself proves nothing. If you should conclude that the money resulted from gambling or some other venture, you should ignore it, but the law allows you to consider the question.

Now, flight. The flight of a defendant immediately after it is discovered that a crime has been committed is a fact which if proved may tend to prove what is called the consciousness of guilt on the part of the defendant and may be considered and weighed by you in connection with all the other evidence. Whether or not evidence of flight shows a consciousness of guilt and the significance, if any, to be attached to such circumstances are matters for your determination. The flight of a defendant does not create a presumption of guilt, but it is merely a fact to be considered by you together with all the other evidence determining the guilt of innocence of the defendant.

Of course, the mere fact that a man may fear prosecution by no means establishes he is guilty. Confident

in his own innocence he may still not wish to tangle with the Government.

However, if you are satisfied that the flight related to fear of prosecution for this crime, you may consider it with all the other evidence in the case.

And association. Where a person is charged with conspiracy the law allows evidence of association, even wholly innocent association with his alleged co-conspirators. The theory is that people engaged in a joint enterprise may be more likely to be found together than those not so engaged. But it must be obvious to you that association in and of itself proves nothing. There could be any number of reasons why Mr. Vidal and Mr. Ortega socialized with each other.

For example, you have heard testimony that they had been friends from childhood. However, the law says that you may consider association testimony for such value as you in your sound judgment think it may have.

The point is that after giving it the cautious treatment I have indicated, you may use evidence in any or all of these three categories along with all the other evidence in the case in determining whether or not guilt has been established beyond a reasonable doubt.

Speaking of other evidence in this case, there

is one peculiarity in this lawsuit which I should call to your attention. It is this: Unless you find the testimony of George Warren Perez to be substantially in accord with the facts as they actually happened, you must acquit both of these defendants. The reason is that without Perez' testimony there would not remain in the case enough evidence to support a verdict against either of them.

That doesn't mean you have to like Mr. Perez. It does mean, however, that in order to convict you must, after having considered his testimony together with all the other evidence in the case, conclude beyond a reasonable doubt that the events he told you about, particularly those related to these defendants, happened substantially as he described them.

Now, you will note I said, "substantially." Mr. Perez was not presented to you as infallible and, as with any other witness, you are entitled, if you think it proper, to reconcile any inconsistencies you may find in his testimony. But in order to convict either defendant you must find beyond a reasonable doubt that the events relating to such defendant transpired substantially as Perez described them.

This brings me to the question of reasonable doubt. Let me define that term for you. The words really

define themselves.

When you analyze it it is common sense. In a civil case all that plaintiff has to do is establish his case by what is called a preponderance of the evidence which boils down to mean that it is more likely than not that what the plaintiff has asserted is true and the jury is entitled to give him his verdict.

Now, that may be fine and indeed is fine when all that is involved is whether A should pay B some money. But the purpose of the Government in bringing a criminal case is to authorize the Court to commit the defendants to jail. And our liberties wouldn't be worth much if it were possible to put a man in jail simply because his guilt seemed more probable than his innocence.

TK2 B3 a.m. Therefore, the law says guilt must be established beyond a reasonable doubt.

There are two words in that definition: "Reasonable" and "doubt."

The meaning of doubt is self-apparent. The word "reasonable" is in the last analysis equally self-defining. It means a doubt for which you can give a reason. It isn't just a fanciful doubt on an excuse for ducking a disagreeable duty. Nobody likes to be in the position of convicting a fellow human being, but the law would also be in a sorry

state if jurors wouldn't take the responsibility for finding guilt where it is established beyond a reasonable doubt.

Also the "reasonable" part of the term goes to the essence of jury deliberation. If one of you has a doubt and expresses a reason for it and another juror has no doubt, the expression of your reason for your doubt will probably do one of two things: It will either enable your fellow jurors to demonstrate that your doubt is unreasonable, or it will enable you to demonstrate to him or her that he or she should have a doubt.

If you express your doubts or lack of them to each other, you should be able to resolve them one way or the other. Of course, a doubt, like everything else in this case, a reasonable doubt, must be based on the evidence or the lack of evidence, not on something you may have heard on the outside or some impression or opinion you may have derived from the outside.

It has to be based on the evidence or lack of evidence. Otherwise how could you discuss it with your fellow jurors? All that you have in common with each other is what you have heard in this courtroom, and it is that common basis upon which you must base your deliberations.

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In this connection I may point out that while it is your duty to discuss your doubts or lack of them with each other and listen to each other's views, you should adhere to any conscientious opinion which you might hold and not give it up merely for the sake of unanimity. I don't think there is anything I can add to that. The law simply requires you to do your best to convince your fellow jurors of the correctness of your view and at the same time to listen with an open mind to theirs and to make a conscientious effort to reach a result which conforms to the conscientious belief that each of you holds.

I assume you are not going to start unanimous. Unanimity comes from discussion among you, an exploration of your doubts or lack of them and a discussion of the evidence or lack of evidence on which there is doubt or lack of it and that is how unanimity is achieved.

Before I leave the question of reasonable doubt, it being so important, let me read another definition that was given by a Judge for whom I have great respect.

"It is a doubt based on reason which arises from the evidence or lack of evidence in the case. It is a doubt that appeals to your reason, to your judgment, to your common understanding and your common sense. It is a doubt such as would cause you to hesitate to act in matters of

importance in your daily lives. But it is not caprice, whim or speculation. It is not a doubt that a juror may conjure up to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Let me repeat. It is a reasonable doubt." That ends the quotation.

That you can see does not much differ from what I said but I just thought he said it rather well.

Closely related to this doctrine of reasonable doubt is the concept of the presumption of innocence. That means that the Government has the burden in this case and that such burden never shifts. I have told you that the defendant doesn't have to prove anything. The point is that the presumption of innocence continues in his favor throughout the entire trial and remains there in the jury room until you have finally resolved it, if you ever do, by a verdict of guilty. It means this: Right up to the last minute your discussion should include the proposition that the Government has the burden and if the Government hasn't sustained that burden that that in itself can be the basis of a reasonable doubt.

In connection with the presumption of innocence let me remind you of what I told you when you were being selected and what I again emphasized right after the defendant Vidal had announced that he rested his case.

The defendant Vidal is deciding to rest his case without himself taking the witness stand was exercising a right given him by the Constitution of the United States. For reasons I have explained to you, unless you respect that right and refrain from speculating as to why he exercised it or what he may have said had or otherwise decided, the defendant Vidal will not have had a fair trial. I think I need say no more.

I have several times mentioned the division of responsibility between me and you. One result of that division is that you should have no concern with what punishment might be imposed upon either of these defendants should your verdict as to either or both of them be guilty. That is my responsibility. I trust you to deal with the facts; you must trust me to deal with any responsibility your verdict may impose upon me.

I have mentioned to you that the indictment in and of itself is no proof of anything. I have told you that it is no concern of yours--or at this moment of mine--why those named in the indictment other than Antonio Borrego Vidal and Manuel Uziel are not on trial before you. The same goes for any other alleged co-conspirators whose names you may have heard.

Your and my present concern, each keeping within

his or your own responsibility, is to determine whether Antonio Borrego Vidal and Manuel Uziel, or either of them, are guilty beyond a reasonable doubt of the charges set forth in the indictment. We are not concerned with anybody else

There is a another rule that seems appropriate to mention here. We are not concerned with witnesses that weren't called either. You may wonder as to any given fact why one witness or another whom you heard mentioned was not called. The law on that is this:

Unless there is evidence before you that one party or the other had a special way of getting a given witness, you may not speculate as to why that witness was not called. And if any party wished to establish the other party had special access to a witness, it was available to such party to establish that. As far as I can recollect, there is nothing in the evidence before you that any absent person was specially within the control of either party or any absent evidence was specially within the control of either party and therefore you are confined to the evidence before you and don't speculate as to what any other evidenc might have shown or any other witness if he had been called, or any other kind of evidence.

Let me now turn to the specific charges set forth

in the indictment. The first charge or count -- they are called counts, the indictment is set forth in several counts and two of them are here involved.

The first count charges that these two defendants conspired with Luis Gomez Ortega, George Warren Perez and various other persons named and unnamed to import heroin into the United States and distribute that heroin in violation of the laws of the United States. I shall discuss with you later why I don't mention cocaine at this time.

How then does the law define the crime of conspiracy? The crime of conspiracy is defined in the statutes of the United States substantially as follows:

If two or more persons conspire to commit any offense against the United States and one or more of such persons does an act to effect the object of the conspiracy, he shall be guilty of the crime of conspiracy.

It is very simple and let me repeat it.

If two or more persons, any two, conspire to commit an offense against the United States and one or more of such persons does an act to further the object of the conspiracy, he shall be guilty of the crime of conspiracy.

You can readily see that there are three elements of the crime, each of which must be established to your satisfaction beyond a reasonable doubt. First, there has

to be a conspiracy.

Second, the object of the conspiracy has to be to commit an offense against the United States. That means to say to violate a statute of the United States.

Thirdly, one or more of the conspirators has to do something to effect such unlawful objective.

What then is a conspiracy? A conspiracy in ordinary layman's language is no more or less that a common undertaking entered into between two or more persons to achieve some unlawful objective.

We are always in our daily lives watching people engage in common undertakings. If three of you should agree to have lunch together and send one of you ahead to the restaurant to reserve a table and put in the orders, you would be engaged in a common undertaking. A common undertaking only becomes a conspiracy, however, if the objective is unlawful.

The first task then is to determine whether Luis Gomez Ortega and any one or more of the other persons I have identified were engaged in a common undertaking to violate the narcotic laws of the United States.

A conspiracy obviously doesn't have to be in writing and doesn't have to have any particular formality attached to it. It is, as I have said, simply a common

undertaking. Indeed, all conspirators don't necessarily have to know what the others are doing or have done. What is necessary, however, is that each conspirator knows the existence of the common undertaking, is aware of its unlawful purpose, and intends to further that particular unlawful purpose.

If you become satisfied beyond a reasonable doubt that such a conspiracy did indeed exist, then you should then consider whether the Government established, again beyond a reasonable doubt, that Antonio Borrego Vidal or Manuel Uziel or both of them at some point became knowing and willful participants in such a conspiracy. One cannot stumble into a conspiracy by mistake. A person cannot be guilty of conspiracy merely because he associates with others who happen to be so guilty.

A person can be guity of conspiracy only if he knows the common undertaking is underfoot, if he knows that such common undertaking has a particular unlawful purpose and if he willfully and intentionally decides to join in the common undertaking for the purpose of furthering that particular unlawful purpose.

Of course, once a person is found to have entered into the conspiracy, it is immaterial whether or not he accomplishes his purposes in doing so or whether he ultimately

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receives any benefit from his conspiritorial conduct.

It should also be observed that a conspirator does not have to be aware of all the details of the conspiracy or the conduct of the affairs of the various members. What is necessary and without which one cannot be determined a conspirator is that he have knowledge of the basic unlawful object of the conspiracy, in this case the unlawful importation and distribution of heroin, and that it was his deliberate intent to further that unlawful objective.

Obviously, it follows from what I said knowledge without willful participation is not enough, and that neither of the defendants had any obligation to expose the conspiracy just because they may have known about it. One can only become a conspirator by knowingly and willfully participating in the unlawful objective.

To summarize then, before you can find either of these defendants participated in a conspiracy, you must find as to the particular defendant whose case you are considering first that he knew an unlawful conspiracy to be afoot; that he knew the objective of the conspiracy to be the unlawful importation and distribution of heroin; and that he knowingly and willfully participated in the conspiracy for the purpose of advancing such unlawful purpose.

In this connection let me give you the legal

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definition of the words knowingly and willfully.

And act is done knowingly if it is done voluntarily and purposefully, not because of mistake, accident or mere negligence or any other innocent reason.

An act is done willfully if it is done knowingly, deliberately and with an evil motive or purpose.

Now, of course, evil motive or purpose is something that you don't see on a tape. A man doesn't go around and put a sign on now I have an evil motive or purpose. There is no way known to find out what is inside a man's mind.

You decide whether or not he had an evil motive or purpose by looking at everything that you believe that has been said about his activities and decide whether all those activities, all the evidence that you believe about his activities, satisfies you beyond a reasonable doubt that his motive or purpose in acting as he did was evil within the terms as I have defined them. Evil means an intentional violation of the narcotic laws of the United States, it doesn't mean just conduct which you don't approve of.

If you do find such knowing and deliberate participation to exist its extent is immaterial. It doesn't make any difference if one is a main conspirator or a less

important one. If one knowingly participated in the conspiracy, his guilt is equal and that is all there is to it.

Nor does it make any difference as far as one's guilt of the crime of conspiracy is concerned whether one was a member on the day that the conspiracy was hatched or whether he joined it in the last day before its dissolution. Knowing participation at some point is all that counts.

At this point may I digress a moment. You will recollect that the evidence before you suggests that Luis Gomez Ortega and some of the others may have engaged in various illegal enterprises. Before either of these defendants on trial may be convicted, you must be satisfied beyond a reasonable doubt that he was associated with Ortega in a single, definable conspiracy.

To simplify your task in this regard I am going to pare down the question which is going to be presented to you. I am going to direct you to confine yourselves exclusively to such part of Ortega's alleged activities as are concerned with the importation of heroin hidden in automobiles as generaly described by the witness Schoch.

That activity started you will recollect with a shipment concealed in an Accadian -- I remember that, I never heard it before -- and ended according to the Government sometime after Ortega's capture with the Jaquar but in

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no event later than October of 1973.

Tk3 B3 a.m. I therefore charge you as a matter of law that you may not convict either of the defendants unless you are satisfied beyond a reasonable doubt that he was a willful and knowing participant in that phase of the activities of Ortega and his alleged co-conspirators.

Of course, that doesn't prevent you from considering the other evidence before you as far as you may find it relevant to the question as I have just defined it.

For example, you might find testimony concerning Luis Ortega's alleged cocaine activities relevant to the question of whether or not either of these defendants participated with him in the automobile heroin ventures.

For another example, you may find such evidence relevant to your task of assessing the credibility of witnesses such as Perez and Uziel.

Needless to say, by mentioning this as an example, I do not mean to suggest that you should find this particular evidence any more or less relevant than any other. I mean just what I say, for example.

If then you should find beyond a reasonable doubt that Ortega and the others were engaged in a criminal conspiracy, and that either or both of these defendants willfully and knowingly participated in the phase of Ortega's

activities that I have just mentioned, it next becomes necessary to determine whether any conspirator, not necessarily one of these defendants, committed an act, what is called an overt act, in furtherance of the conspiracy.

You will recollect that I told you when I read the statutory definition somebody has to do something in furtherance of the conspiracy. It is a peculiarity of the law of conspiracy that mere talk and agreement is no crime, someone has to do something, take some step to accomplish or further the unlawful objective. Such a step is called an overt act.

The indictment charges that several such overt acts were committed in furtherance of the conspiracy and you must find beyond a reasonable doubt that at least one such overt act, one of the ones charged in the indictment, in fact occurred.

I will read four of them for illustrative purposes. You will get the indictment and read the rest if you want.

On or about July 21, 1971 co-conspirator Luis Gomez Ortega withdrew approximately $500,000 from the First National Bank of Fort Lee, Fort Lee, New Jersey.

I am just reading the Government charge, I am not endorsing it or questioning it, I am just reading it.

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On or about September 17, 1971, the defendant Manuel Uziel went to the vicinity of 992 Amsterdam Avenue, New York, New York.

On or about September 19, 1971 the co-conspirator Luis Gomez Ortega, Jean Orsini and George Warren Perez went to the vicinity of Madison Square Garden, New York, New York.

On or about September 23, 1971 the defendant Antonio Borrego Vidal withdrew approximately $500,000 from the First National Bank of Fort Lee, Fort Lee, New Jersey.

You will note that an overt act need not of in itself be illegal. For example, it is not illegal or sinful to be in the vicinity of 992 Amsterdam Avenue or as with Mr. Ortega and others going to the vicinity of Madison Square Garden.

If you find beyond a reasonable doubt that his or their purpose in so doing was do further the conspiracy, such conduct on his or their part would satisfy the statutory requirement of an overt act. It just means doing something.

Also, as indicated by what I have just read to you, that statutory requirement may be satisfied by the act of a co-conspirator not here on trial. I also remind you that proof of a single overt act satisfies this particular statutory requirement.

If then you should conclude beyond a reasonable

doubt that such a conspiracy in fact exists and that either or both of these defendants at some point became a knowing and willful participant in such conspiracy, you should then consider whether such defendant or defendants is or are guilty of actually possessing the half kilo of heroin that the agents left in the Jaguar and found there when Ortega, Orsini and Perez were arrested on September 19, 1971. That crime is charged in the second count of the indictment.

The Government does not contend that either defendant had any physical contact with such heroin; no such contention is necessary.

The law provides that when an unlawful act is done in furtherance of a conspiracy by one of several co-conspirators and such unlawful act was in the reasonable contemplation of the other conspirators, each conspirator is as guilty of performing the act as the person who actually does the deed.

I charge you as a matter of law that willful possession of the heroin in question for the ultimate purpose of distributing it would be a violation of the statutes of the United States.

So that if you should find that either of these defendants or both of them to have been a member of the conspiracy, you should recall that you have two trials be-

fore you, ask yourselves the following questions with respect to the case against the particular defendant you are considering.

Of course, you won't trouble yourselves with this question unless you have already found that particular defendant guilty of the conspiracy. If you have so found then you ask yourself: One, did Orsini, Ortega and Perez, or any one of them, knowingly and willfully possess the heroin in question with intent ultimately to distribute the same.

In this connection I may say that you may conclude that knowing possession of or control of an automobile believed to conceal heroin may constitute possession of such heroin.

Your question is were they or any of them in knowing and willful possession of the heroin in question, namely the heroin in the automobile, and was their possession with intent ultimately to distribute it.

Second, if so, were they -- that is, Ortega and the others -- were any of them,as to whom you have found such knowing and willful possession,members of the conspiracy and then acting in furtherance of its unlawful objective.

Thirdly, was it within the reasonable contemplation of the particular defendant whose case you are considering that such willful and knowing possession would occur in the course of the conspiracy.

If you answer all those questions in the affirma-

tive beyond a reasonable doubt, you may convict the defendant whose case you are considering of the substantive crime of possessing heroin with intent to distribute it, even though there may be no evidence that such defendant ever came anywhere near the heroin in question or ever intended to do so.

Now that, ladies and gentlemen, is the law that I think is applicable to the matters which you have to decide.

I am now going to excuse you while counsel for either side has an opportunity to make suggestions or corrections. Then I am going to give you some housekeeping details, in any event, whether or not I make any corrections, and I will send you back to begin your deliberations.

So, as I told you earlier -- this is the last time I shall ask you, but keep it in mind -- do not discuss this case or anything about it until I send you back finally in a few minutes.

Will the alternates when they come back bring with them anything, any personal effects you have so you won't have to go back to the jury room and the marshal while we are discussing other things will take your lunch orders. So the marshal will be there with the lunch menu, and I am sending in lunch for you.

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I didn't mention bad character or motives in connection with reasonable doubt, but I mentioned it in connection in terms of all the other evidence which they are to consider. I decline to charge further with an exception.

MR. ALTER: Thank you, your Honor.

THE COURT: All right, bring them in.

(Jury present)

THE COURT: Well, ladies and gentlemen, I think everything I am about to say was substantially covered, but one side or the other thought it should be a little clearer.

Now, remember the witness Perez. He pretty much gave you his life history on direct or cross, or both. If anything in that life history impressed you as immoral you may take that into consideration in weighing the testimony which he gave before you the other day.

Now, I mentioned to you that an individual conspirator doesn't have to know all the other conspirators, what they are doing, everything they are doing.

The corollary to that is he does not even have to know who they are. All he has to know is there is a conspiracy, he knows who he is dealing with, the persons he is dealing with are members of a conspiracy; that the

conspiracy has the unlawful objective and that he willfully and knowingly joined it to further that objective.

General Motors doesn't have to know who its salesmen are. A conspirator doesn't have to know who the other conspirators are. The president of General Motors doesn't necessarily have to know who the branch manager is. All you have to know is the objective.

As I said on prior inconsistent statements of a witness, of course if a defendant said anything to anybody and it is reported to you, that is a different category and you may take it into consideration for what value it has. It is part of the evidence.

Now, I am going to ask that this be spread around. That is the form of the verdict for the jury.

Just preliminarily, keep one of these completely clean until you are ready to come out. You can use the rest to make notes, or whatever you want. Keep one completely clean until you are ready to put the final answers down.

As you see from the way it is set up it emphasizes, as I told you, that you have two different lawsuits here. Each one is different. As to both cases, if you answer not guilty to the first question, that ends your deliberations. There can't be a guilty to the second question unless there has already been a guilty to the first.

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Now, one down here, "In the event" -- that is a procedural matter which has procedural consequences. You need not concern yourselves with that. Obviously you don't come to this question I have asked unless you have found a guilty verdict on the first question with respect to the individual defendant. And my putting it down there doesn't suggest that you should. It has no bearing one way or the other on the question, if you should come to it.

But if you do find a defendant guilty, it is procedurally important to know whether his participation in the conspiracy began before or after May 1, 1971 and on that question should there be a reasonable doubt, you should resolve it in favor of a no answer.

In other words, if you find a given defendant guilty of participating in the conspiracy and you come down next and decide whether his participation began before or after May 1st and there is a reasonable doubt in your mind on this subject, you come down with an answer "After." I think that is all there is to be said about that.

Now, I haven't mentioned this to you but I suppose you know that a verdict has to be unanimous. There is no such thing as a ten to two or any other percentage verdict one way or the other in a criminal court in the United States District Court. Your verdict has to be unanimous one way or the other or there is no verdict.

Now, in that connection, let me make this observation. If during the course of your deliberations you want any advice from me, you are certainly entitled to get it. For example, if something I said in the charge isn't clear to you or I left out something that you think I ought to have told you, have your forelady write a note and send it out to me and ask me to elaborate or repeat or anything

else. Don't have any hesitancy of doing that. After all, I am a lawyer and a specialist and I spent all my life talkint to other lawyers who are specialists. You have heard doctors talking together and you can't understand what they are talking about when they are talking to each other.

I tried in my charge to overcome this and talk to you as a non-specialist but it may be very well that I didn't wholly succeed and there may be language in my charge that is fine to these gentlemen, but about which you haven't the foggiest notion. I hope that is not true and that wasn't my objective but if there is anything that is not clear have no hesitancy in asking me to clarify.

If there is something you think I should have covered which I haven't let me know and I will clarify it.

But one thing, never tell me how you stand at any given time with respect to the guilt or innocence of these defendants or either of them.

The reason for that, when you think about it -- you may not think of it and that is why I mention it. Suppose you should be deadlock, and I am not suggesting that you will be, but supposing you should be and you stand, say, ten to two one way or the other. It might then become -- I might try to reason with you as to the ways and means of breaking the deadlock and make a suggestion that you do

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this or that, consider this or that. If I know how you stand, if I know which side is the ten and which is the two, there is no method of speech known to God or man which would permit me to reason with you to try to persuade you to reach a unanimous verdict without telling the two that I want them to come over to the ten. If I don't know which side you are on -- because I think the ten were right also -- there is no way that I could refrain from giving the impression. If I don't know which way you are, then I can reason with you without the danger of putting pressure on anybody. I just want to suggest ways of resolving the difficulty. So under no circumstances tell me how you stand at any given time with respect to any given defendant.

Now, there is a copy of the indictment available for you if you want it and you can just send for it and it will be sent to you.

Any exhibits you want, send for them and they will be sent to you. Obviously, you are not going to remember the numbers of the exhibits so describe anything you want and if counsel can agree on what you are describing it will be sent to you right away. If they can't, I might send for you to have you explain what it is you want so we can identify it.

And if there is any testimony you want read,

just ask the question and it will be arranged and the testimony will be read back to you. But as with exhibits, don't expect an instant replay. I mean if you ask a question obviously the chances are that your question won't have been in the mind of either of the counsel when they were examining the witness so it will take time in the first place to decide what particular testimony responds to your question and, in the second place, to dig it out and get it ready to read.

So if you ask for testimony of a witness on such-and-such a subject, unless it is so vital that you can't do anything, just put that question aside and go about with your deliberations confident that in due time you will get the information you sent for.

I think that is all. Let me see counsel at the side bar.

One exhibit you won't get is the heroin, not because we are afraid you will use it but, as you observed, these cases are tried in various courtrooms and it may become necessary sometime to testify to the chain of title and I don't think you would all want to be called back at some future trial to testify what happened to the heroin.

(At the side bar)

MR. PANZER: I have nothing.

MR. ALTER: No, your Honor.

(In open court)

THE COURT: Swear the marshals.

(Two marshals were duly sworn)

THE COURT: Ladies and gentlemen, I submit the case to you with full confidence that you will do justice between these defendants and the United States of America.

MR. ALTER: May I see you just a moment?

(At the side bar)

THE COURT: Some Judges keep the alternates in the event that if something should happen to one of them they will become an active juror and fill-in or substitute. Do any of you have any view on that?

MR. ALTER: I would respectfully oppose it due to the fact that any discussion -- they wouldn't have the benefit of any deliberations up to that point.

THE COURT: I don't think it is worthwhile.

MR. BELLER: I don't think so.

THE COURT: We will just proceed with the jury.

MR. ALTER: Do you have any objection if we talk to the alternates?

THE COURT: I will take that up.

MR. BELLER: Would your Honor tell them that they don't have to talk?

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"Please supply us with the initial testimony given by Uziel from the time that he heard of the arrest of Ortega, Orsini and Perez through his pickup and delivery of papers between Mrs. Ortega and Mrs. Perez.

"2 May we also have the cross examination covering this testimony."

Now, counsel have agreed among themselves what answers that question and Mr. Wolf and the clerk will read to you.

(Record read.)

THE COURT: All right, ladies and gentlemen. If you want anything more.--

THE FORELADY: Would you redefine knowingly and willingly, conspiring?

THE COURT: Let me read what I told you the first time and see if I can expand on it.

What I said the first time, in this connection let me give you the legal definition of the words "knowingly" and "wilfully." An act is done knowingly if it is done voluntarily and purposely, not because of mistake, accident or mere negligence or any other innocent reason. An act is done wilfully if it is done knowingly, deliberately and with an evil motive or purpose.

Well, I don't know whether that adds anything to the words themselves. That is what the courts have said it means. Knowingly means not inadvertently, not without thinking about it, like walking out of a door, or doing something kind of automatically or just because you are in the habit of doing that kind of thing. Knowingly means deliberately, intentionally, deciding to do something, purposely making up your mind: "Now I am going to do this."

Now, wilfully implies the evil motive part of it: a wilful child. Peopel call a child wilful. They don't speak of a wilful child when he just wants to do his homework. They speak of a wilful child when he wants to do something naughty.

When you get to be a man you drop the word "naughty" and change it to evil. But that is what it is.

Knowingly is purposefully and intentionally, and wilfully imputes the element of evil.

Now, I also told you, of course, you remember, in connection with this phase of the charge that human beings don't go around with signs on them saying, "I am about to be knowing and wilful." You have no direct testimony that so-and-so was knowing

and wilful at the time, but from all the evidence in the case consider the acts in question and come to the conclusion whether that act was knowingly and wilfully done by a person at that time.

JUROR NO. 8: Your Honor, if one knowingly does an act and, let's say, may have sensed that the act is in behalf of something that may not be legal, but he chooses to say, "Hey, I don't want to know what that illegality is," does he remain guiltless? What is his involvement there?

THE COURT: What he chooses to say, either to himself or anyone else, is immaterial. If his state of mind is that he just hasn't found out -- in other words, you can't tax him with negligence or whether he ought to know. It's a question of whether he does know.

Now, he can't wilfully decide not to know. He can't wilfully reject the evidence of his own eyes and say, "I don't know," when in fact he does know.

You can't say, "Well, look, you ought to know, if you had the sense you were born with you would have figured that out." That is not enough. If he doesn't have the sense he was born with, that is his misfortune, it is not criminal.

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But if he does wilfully blind himself, that can be considered.

THE FORELADY: Is that equally conspiratorial?

THE COURT: Well, if you just avoid finding out something that is going on, you just avoid finding out, just don't put yourself in the way of finding out because it is disagreeable information and you don't want to know.

JUROR NO. 8: Accidental.

THE COURT: That is not conspiracy.

The most common illustration of that in the literature is the man who is the last person who knows that the other one is being unfaithful. They just put it out of their minds and don't draw any inferences that other people draw. That is not conspiratorial. But if you just, in order to enable yourself to do something that you know is wrong, deliberately decide that you are going to ignore what you see, that is. And it is the deliberate decision to do something wrong that controls, when you have deliberately decided to do something wrong. When you deliberately decide to do something wrong, then that is knowingly and wilfully.

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JUROR NO. 8: That includes doing something which in and of its own right is not illegal, but is in support of an illegal activity?

THE COURT: Yes, the individual act in and of itself, like driving the car down the street, there is nothing illegal about it. If you are driving the car down the street in order to take someone down there to do something illegal, that is illegal, but you have to really know.

In other words, what you really have to find is he really didn't succeed in not knowing, that is what you have to find out. If he actually succeeded in not knowing, then he didn't know.

The words "he wilfully blinded himself" merely imply he didn't succeed, but you have to find that he literally and actually succeeded in keeping himself ignorant and he doesn't know.

Of course you have to find this beyond a reasonable doubt.

I will see counsel at the side bar.

(At the side bar.)

MR. PANZER: Your Honor, in light of the question I would ask you again to charge them knowledge in and of itself is not enough to make one a member

of the conspiracy. That was part of the question they asked.

They second thing, I think the way your Honor worded it, you know, well, he can't wilfully, puts now the burden on the defendant.

THE COURT: I said if he succeeds in making himself ignorant.

MR. PANZER: They have to find criminal intent. That is the crux of it. And that he did these things with criminal intent, which implies that he wanted to commit a crime, not that he wilfully disregarded it. That is the issue.

THE COURT: They have to find criminal intent.

MR. PANZER: I will ask you to charge those two things.

(In open court.)

THE COURT: Of course, all this concentrating on the word "knowingly" doesn't detract from the fact that mere knowledge is not enough; that is you have got to know and merely knowing that a conspiracy is going on isn't enough. You have to intend to become a part of it

You don't want to lose sight of that

fact by all this talk about the one word.

It all boils down, you still have your presumption of innocence and you have still got to find the defendant you are considering -- of course, there is only one defendant left -- knowingly and wilfully intended to further the unlawful objective of this particular conspiracy, namely, the importation and ultimate distribution of heroin.

(At 5:25 p.m. the jury left the courtroom to resume its deliberations.)

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now. Arrangements have been made, I hope, for a reasonably good restaurant.

I just want to caution you to the fact that you will be in the custody of marshals who will be eating with you and they have no more business what your deliberations are than I have, or that defense counsel and the District Attorney has. While you are eating just don't discuss the case or in any way talk about it.

All right. The marshals will take you eat and bring you back and you will resume your deliberations.

The jury left the courtroom at 6.32 p.m.

(In the robing room, 8.45 p.m.)

MR. PANZER: My motion at this time is for a mistrial based on the conversation you had with the one juror when they came in and asked a question on wilfulness and so forth. And also on the explanation of naughtiness and making a comparison between that and evil intent.

THE COURT: I called for a bench conference after that discussion and it seems to me that was the time to voice any grievance.

With respect to naughtiness, I then told them that was a childish thing and when you got to be an adult that was a question of evil intent. The purpose was merely to show the word "wilful" had an evil connotation

which naughty didn't.

In any event, your motion is denied.

MR. PANZER: Exception.

(Note received from the jury at 8.55 p.m.)

Note reads as follows:

"Dear Judge Knapp --

"1. May we hear any testimony in which at least one of the Battle brothers was mentioned.

"2. May we know the date the conspirators first learned of the shipment secreted in the racing car on the truck."

(Note marked Court's Exhibit 12.)

xx (In open court, without the presence of the jury.)

MR. BELLER: Your Honor, Mr. Panzer and I have gone through the record. With respect to Question 2 --

THE COURT: You can put that on the record afterward.

(Jury present, 9.40 p.m.)

THE COURT: Good evening, ladies and gentlemen. I have your question which has been marked Court's Exhibit 12.

Before I get to that, let me give you the logistics. It is now a quarter of 10 and at 10 o'clock

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee, - *against* - MANUEL JZIEL, Appellant.	*Index No.* *Affidavit of Personal Service*

STATE OF NEW YORK, COUNTY OF New York *ss.:*

I, Victor Ortega, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1027 Avenue St. John, Bronx, New York
That on the 14th *day of* August *19*75 *at* 1 St. Andrews Plaza, N.Y., N.Y.

deponent served the annexed Appendix and Brief *upon*

Paul J. Curran

the Attorney *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* Attorney(s) *herein.*

Sworn to before me, this 14th
day of August *19* 75

Victor Ortega
VICTOR ORTEGA

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977